

Southern Walk – a Van Metre Community

Telecommunication Service Contract

Van Metre Companies
&
Openband of Virginia, LLC

PART A

Brief presented by

Dwayne F. Cotti
21970 Sunstone Court
Broadlands, VA 20148

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1.0 Executive Summary

The evidence contained within this document supports the following summary statement: Van Metre Homes negotiated a 65 Year exclusive telecommunications contract with a company, known as OpenBand of Virginia, LLC, to provide basic TV, telephone and Internet Services. Van Metre co-founded OpenBand of Virginia, LLC with M. C. Dean on behalf of the future residents of Southern Walk. Van Metre created the Southern Walk homeowners Association as a mechanism to collect the mandatory monthly assessment from Southern Walk homeowners. In addition, Van Metre controls the only governing entity, which is the Southern Walk Home Owners Association. The sole purpose of this association is to enforce the "HOA" contract and the mandatory monthly assessment from Southern Walk homeowners as well as approving price increases at their sole discretion. In doing so, Van Metre created an unfair business practice and a telecommunications monopoly for Southern Walk homeowners. In addition, Van Metre refuses to address contractual flaws as identified by Southern Walk homeowners.

In closing, it is my assertion that Van Metre has violated anti-trust laws; Van Metre rejects any accountability for the degradation of services provided by OpenBand to Southern Walk homeowners. Van Metre controls the Southern Walk homeowners association as a means to increase their profitability and earnings through a guaranteed "kickback" from OpenBand for exclusivity within Southern Walk.

2.0 Parties Involved

Van Metre Companies 5252 Lyngate Court Burke, VA 22015 Attn: Laurence Bensignor	Van Metre Companies 44675 Cape Court, Suite 171 Ashburn, VA 20147 703-425-2600 rbarnett@vanmetrehomes.com Attn: Roy Barnett (Board of Directors – Member at Large)
Van Metre Companies 44675 Cape Court, Suite 171 Ashburn, VA 20147 703-723-2800 pleader@vanmetrehomes.com Attn: Pat Leader (Board of Directors – SWHOA Board President) (No longer and employee)	Van Metre Companies 44675 Cape Court, Suite 171 Ashburn, VA 20147 703-425-2600 धारover@vanmetrecompanies.com Attn: Denise Harrover (Board of Directors – SWHOA Board Vice President)
Van Metre Companies 44675 Cape Court, Suite 171 Ashburn, VA 20147 703-723-2800 mholliday@vanmetrehomes.com Attn: Mark Holliday (Board of Directors – SWHOA Board Secretary) (No longer and employee)	<u>OpenBand of Virginia, LLC</u> 22461 Shaw Road Dulles, Virginia 20166 703-802-6231 bdean@mcdean.com Attn: William Dean
M. C. Dean 22461 Shaw Road Dulles, Virginia 20166 703-802-6231 jbrabham@mcdean.com , jbrabham@openband.net Attn: Jim Brabham	Armstrong Management 703-385-1133 twade@armstrong.net Attn: Tom Wade

3.0 Homeowner Concerns and Issue Summary

At the onset of the development of the Southern Walk Community and before a single house was built, Van Metre negotiated with M.C. Dean to create a joint venture call OpenBand. Van Metre then subsequently created and incorporated the Southern Walk @ Broadlands Homeowners Association, Inc. In addition M.C. Dean created OpenBand @ Broadlands LLC, which then spun off two entities: One called Broadlands Communications and the other called OpenBand SPE, II, LLC. Once these entities were established, the Southern Walk @ Broadlands Homeowners Association, Inc. established a contract with one of these OpenBand entities to provide exclusive telecommunications services (TV, Telephone, Internet) to the Southern Walk community through the collection of HOA monthly payments. The contract established and agreed upon on behalf of Southern Walk residents was done so prior to the onset of construction. In addition, the SWHOA contracted to Armstrong Management to manage the collection of dues from HOA residents.

These actions created the means by which Van Metre and M. C. Dean could prevent competition within Southern Walk and establish a mechanism by which they can control pricing as well as profit from revenues obtained through resident HOA payments.

These are the resident's concerns regarding this situation:

1. The contract established between Southern Walk @ Broadlands has a minimum term of 25 years and a maximum term of 65 years with no option to opt out. Openband has exclusive rights within the Southern Walk community – furthermore 239 (out of 933) Southern Walk homeowners have DirecTV/Dish Network as their primary TV provider – however they are require to pay the mandatory SW HOA fee.
2. New home buyers are required to agree to these terms or they would not be allowed to purchase a home within the community. (Some original purchasers did not have contract terms disclosed. Additionally, Van Metre did not start fully disclosing any terms until 2007 after 90% of the community had been built-out)
3. Purchasers of resale homes are not asked to sign any documents to agree to these terms yet it is implied that the terms are inherited during the resale home purchase, which is a contradiction to the SWHOA articles of incorporation.
4. Van Metre holds the majority seats on the Southern Walk HOA Board of directors.
5. Current board membership is set at three Van Metre members and two resident members.
6. In June of 2006 and December of 2006, each resident member positions become vacant. **(These seats have since been filled by two residents. However, Van Metre filled the seats through a selection process, not by a community vote)**
7. By the SWHOA bylaws these positions were to be filled during the first available board meeting or a special meeting is to be called to fill these positions. These replacements would act in these positions until a full community vote can be held in May of 2007.
8. In November of 2006 a nomination for a resident member was brought to Van Metre's attention. Van Metre subsequently rejected that nomination with no explanation.
9. Van Metre cancelled and postponed meetings to prevent this action
10. Pricing for OpenBand services are derived through a comparative analysis of local competitors and set to be "10%" lower than the average prices the competitors set for similar services.

11. The SWHOA board/Van Metre is the sole entity that can approve or disapprove the inclusion of additional competitive pricing in their annual evaluations.
12. Denise Harrover, the VP of the SWHOA Boards and a Van Metre executive, resists adding competitor pricing that could potentially bring pricing down
13. SWHOA residents have identified several areas where the comparative analysis of pricing is inaccurate and flawed.
 - a. TV Pricing was compared with no regard to the number of channels being provided and the existence of an SLA. (Openband provided less channels than competitors and does not provide an SLA)
 - b. Internet pricing is based on a comparison of Openband's Intranet connection speed to competitor Internet throughput speeds. (again no SLA, whereas competitors provide one)
14. Armstrong Management collects information from OpenBand to include within the annual budget for the SWHOA.
15. The SWHOA/Van Metre approves or disapproves this budget which in turn means they approve or disapprove OpenBand's pricing.
16. The collection of HOA payments by Armstrong has generated an excess of \$160,000 in revenue.
17. Through operating agreements, Van Metre is paid 8% of the revenues collected by Armstrong management and paid to Openband through mandatory SWHOA dues. Reference Page 36, Section 5.1 of the operating agreement provided as exhibit A.
18. Through these same operating agreements, Van Metre is also paid 12% of the revenues generated by resident payments for premium services paid directly to OpenBand. Reference Page 36, Section 5.1 of the operating agreement provided as exhibit A.

Based on the information provided within this document, it is the resident's assertion that they are overpaying for sub-standard services under a contract that was not competed. Furthermore, it is our assertion that Van Metre is controlling the amount of our payment and is also profiting from this payment.

4.0 Active Complaints/Unresolved Service Issues

October 23, 2006

Tom Wade
Armstrong Management, Inc.
3949 Pender Drive, Suite 205
Fairfax, VA

To the Southern Walk at Broadlands HOA,

OpenBand is submitting the following *Fee Schedule Change Request* and the attached current Comparable Provider pricing samples for the 2007 calendar year. We provide this proposed 2007 Fee Schedule Summary with the intention of a January rate adjustment.

Proposed 2007 Fee Schedule Summary for Basic Smart Neighborhood Services

Local Phone Service

Verizon Local Phone Line (Ashburn)..... \$24.46

OpenBand 2007 Local Phone **\$22.00**
(10% below Verizon)

Basic Cable Service

Adelphia's Bronzepak Package with first set top
(\$61.15 for Bronzepak plus \$5.00 digital equipment charge) \$66.15

Verizon FIOS Premier Package with first set top
(\$34.95 for bundled Premier Package plus \$3.95 digital equipment charge)..... \$38.90

Loudoun County Competitive Franchised Cable Operators'
Average Digital Basic Service Pricing \$52.53

OpenBand 2007 Basic Cable with first set-top..... \$47.28

(10% below average)

OpenBand will add over thirty new channels to its Smart Neighborhood basic programming package on January 1, 2007. OpenBand has selected a variety of programming which offers something of interest for all audiences, including: sports, children's, religious, lifestyle, International and digital music programming.

High Speed Internet Service

Verizon Fios Internet Service (Up to 30 Mbps/5 Mbps) \$54.95

Verizon Residential DSL (Up to 3 Mbps/768 Kbps) \$29.99

Adelphia Premier Internet (Up to 6 Mbps/768 Mbps) \$49.75

High-Speed Internet :	Down (Kbps)	Up (Kbps)	Avg. Kbps	Price	Bit per Dollar	/	Cost per Bit
Verizon FIOS (30 Mbps / 5Mbps) *	30,000	5,000	17,500	\$54.95	318.47	Kbps/\$	\$0.0031 /Kbps
Verizon DSL (3 Mbps / 768 Kbps) *	3,000	768	1,884	\$29.99	62.82	Kbps/\$	\$0.0159 /Kbps
Adelphia Premier Internet (6 Mbps/ 768 Kbps) *	6,000	768	3,384	\$49.75	68.02	Kbps/\$	\$0.0147 /Kbps
Averages from three Comparable Providers:					149.77	Kbps/\$	\$0.011 /Kbps
OpenBand Glass Mile Internet	100,000	100,000	100,000	\$71.60	1,396.65	Kbps/\$	\$0.0007 /Kbps

Bit Rate Comparison for 2007 Comparable Internet Services

* Comparable speeds are "Up To" the numbers cited. These speeds represent the maximum burstable speed available, not the guaranteed speed, on comparable provider networks. See disclaimers on provider sites for details. The OpenBand "Up To" or maximum burstable speed is 100Mbps (100,000Kbps) bi-directional.

OpenBand 2007 Basic Internet \$71.60

OpenBand proposes a 2007 Smart Neighborhood Basic Service Package Fee of **\$140.88 per subscriber per month** for Southern Walk at Broadlands. This monthly service fee does not include applicable taxes or fees, which are estimated below:

Phone

Federal Universal Service Fund..... \$0.60
Local Number Portability Surcharge \$0.23
3% Federal Tax..... \$0.69
9% County Tax..... \$2.06
Emergency 911 Fee..... \$2.00
Public Right-of-Way Fee..... \$0.64
Relay Center Surcharge..... \$0.16

Cable Television

5% Loudoun Franchise Fee..... \$2.37

Total: \$8.75

*Please note that taxes and fees are subject to change
per Local and Federal regulation. **2007 invoices will
reflect then-current regulation.***

Once you have had a chance to review OpenBand's proposed *Fee Schedule Change Request* and competitive pricing samples for 2007, please contact me with any questions or concerns. I kindly request a written approval for this fee change by December 1, 2006.

Best regards,

Sharon Hawkins
Marketing Director
OpenBand
703-928-8682



22461 Shaw Rd
Dulles, VA 20166
PH: 703-961-1110
FX: 703-421-9036

July 26, 2006

Erika M. Hodell-Corti
21970 Sunstone Court
Ashburn, VA 20148

Dear Ms. Corti,

I have received your recent communications to OpenBand and the Loudoun County Cable and OVS Commission expressing concern for the quality of video service provided by OpenBand. I apologize for the minor delay in responding but wanted to make sure a comprehensive review of your account was performed, which I have included below. This review was solely intended to ensure OpenBand is fully addressing all your concerns on a point by point basis, and to provide our assurance that we will continue to do so in the future. If any of the below information is incorrect, please let us know so that we might completely understand the nature of the problem issues experienced to date.

I have reviewed your account and the trouble tickets you have submitted for video service issues. Records indicate that a credit in the amount of \$16.24 was applied to your account on January 27, 2005 for intermittent HD service problems experienced in January 2005 and reported in the following trouble tickets: 121059, 121243, 122210, 124036 and 124039. A credit of \$1.08 was applied to your account on February 17, 2005 for an HD service interruption that occurred on February 10, 2006 and reported in trouble tickets 126001 and 126006.

According to our records, the next video service trouble ticket was logged on September 21, 2005 for the following reported issue: *audio was going in and out on channel 403* (WJLA Digital - ABC HD). OpenBand technicians, upon inspection of ABC HD signal, found no audio issues. An OpenBand Call Center representative called your residence on September 22 to follow up on this issue and on September 23 for the same and requested that you please call Customer Service if you were still experiencing an audio issue on channel 403. OpenBand received no additional calls on this matter, and the trouble ticket was closed.

I also note that various video service credits were applied to your December 2005 invoice as part of community-wide credits that OpenBand issued for service interruptions which occurred in November and affected various channels for all Southern Walk at Broadlands customers.

On February 4, 2006, I see that you called OpenBand for assistance in authorizing a new set-top box which you received that same day and also submitted a trouble ticket for loss of audio on a handful of HD channels, trouble tickets 206068 and 206189 respectively. The first trouble ticket was closed when a set-top reauthorization was performed, allowing the new set-top box to receive the digital programming options on your account. The latter ticket was closed after a phone conversation with an OpenBand Call Center representative, stating that Mr. Corti would call OpenBand on February 7 if he was still experiencing the audio issues. Ticket was not reopened and no additional notes were logged after February 6, 2006.

On June 20, 2006, I see the first of 10 trouble tickets for video service that have been logged until present. Three of these tickets were submitted on June 20, and two were closed as duplicate entries by OpenBand. The trouble tickets submitted over the last month indicate that you have reported picture and audio issues on local HD channels (TT-238949, 242571, 245740, 246939 and 247096), audio issues on premium channels (i.e., channels 500+) (TT-238949), a video service credit request on July 3, 2006 (TT-242579) and picture and audio problems on specific channels: 29, 35, 49, 52, 55, 62, 75 and 251 (TT-242608 & 243011).

Please note that TT-247096 was closed within 24 hours because this issue was related to an interruption of the source signal broadcast by the programmer and outside of OpenBand's control. This issue was resolved immediately upon receipt of the restored local HD signal.

With regard to the recent trouble tickets on your account, the OpenBand technical team has responded to the issues reported. Actions have included both troubleshooting our distribution system as well as escalating some of the issues with the set-top equipment manufacturer, Scientific Atlanta. Below is a brief summary of the progress we have made to date:

- **Interruptions and/or tiling on HD channels.** OpenBand has verified signal performance outside of your house and, as you know, performed measurements inside. So far, OpenBand has not identified any distribution system problems. Our technical team will need to perform additional troubleshooting, which may involve installing a DVR unit at your house (at no charge) to capture the performance problems;
- **Audio/video synchronization issues.** While some of the issues are unfortunately still inherent with the HD technology, in working with Scientific Atlanta we have determined that there is a software problem in the currently installed version of the Explorer 3250HD firmware, which results in the set-top's failure to meet certain Audio-Video synchronization specifications. OpenBand remains in constant contact with the manufacturer regarding the availability of new firmware that will address the problem and will advise customers of rollout schedule;
- **Intermittent loss of audio on HD channels.** Working with Scientific Atlanta, OpenBand has determined that there is a software problem in the currently installed version of the Explorer 3250HD firmware, which results in the set-top losing the audio feed intermittently. OpenBand remains in constant contact with the manufacturer regarding the availability of new firmware that will address the problem and will advise customers of rollout schedule;
- **Interruptions on analog channels.** So far OpenBand has been unable to reproduce the problem you experienced with the analog channels and one of the standard definition digital channels. Our technical team will continue monitoring system performance. Additionally, if you notice the interruptions again, we would greatly appreciate you informing us of the date and time, and channel(s) affected.

OpenBand sincerely regrets any inconvenience you have experienced as a result of these recurring video service issues. The trouble ticket activity linked to your account in June and July of 2006 has helped OpenBand uncover this video equipment defect, and we are grateful for your patience and continued feedback. To address your service complaints, OpenBand will apply a video service credit to your account in the amount of one hundred thirteen dollars and 94 cents (\$113.94) for HD services, including premiums, for months of June and July. We will continue to monitor your account and apply appropriate credits until these problems are resolved. Our primary concern is ensuring you receive the level of service and satisfaction you deserve as an OpenBand customer.

Month	Service	Qty	Total
June	HD Tier	1	\$11.99
June	HD Set-Top Receiver	2	\$6.00
June	Premium Digital	1	\$41.00
July	HD Tier	1	\$7.95
July	HD Set-Top Receiver	2	\$6.00
July	Premium Digital	1	\$41.00

Premium Video Service Credit: \$113.94

OpenBand will stay in close contact regarding the availability of firmware from Scientific Atlanta and necessary plant adjustments, if any, to ensure that you are provided adequate resolve to you recurring video service issues.

Please be advised that I am also reviewing your *Formal Written Notification* to OpenBand and the Southern Walk HOA Board, dated July 17, 2006. I have requested input from my technical team, and I will provide a detailed response in the coming days.

Thank you for bringing this matter to my attention and please feel free to contact me if you should have additional questions or concerns about the information provided above.

Best regards,

A handwritten signature in dark ink, appearing to read "SHAWKINS", with a stylized flourish at the end.

Sharon Hawkins
Director of Marketing and Communications
(571) 262-8603

cc: Lorie Flading, Loudoun County Cable and OVS Commission



25461 Shaw Rd
Dulles, VA 20166
PH: 703-967-1110
FX: 703-421-9036

September 11, 2006

Dwayne and Erika Cotti
21970 Sunstone Court
Ashburn VA 20148

Dear Mr. and Mrs. Cotti,

I am writing to follow up on recent communications regarding issues with high definition television services that you have reported through OpenBand Trouble Tickets.

Upon the completion of extensive on-site testing of both OpenBand Outside Plant (OSP) and your home's inside video distribution plant in late August, the OpenBand technical team reconfigured the video OSP connection to your home since it was determined the length of your OSP drop, while within specifications, may be contributing to the service issues being experienced. The video connection serving your home has been completely reconfigured and is capable of handling high definition signals without degradation. It is important to note that OpenBand is presently awaiting delivery of a firmware upgrade from set-top equipment manufacturer, Scientific Atlanta, which should further improve the stability of HD service you are receiving.

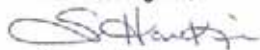
As the Trouble Ticket history on your account suggests this has been an ongoing video service issue, OpenBand will credit your account for all HD fees paid from the time of the first reported service problem of this nature to August 2006, when the OSP configuration issue was identified. Please be advised that a credit will be immediately applied to your OpenBand premium service account in the amount of two hundred seventy dollars and twenty-nine cents. (\$270.29). This credit amount was calculated as follows, and accounts for credits previously issued by OpenBand for HD service issues:

Date	Item	Cost
January 2005	HD Charges	\$21.09
January 2005	HD Svc.Credit(s)	-\$16.24
Feb 2005	HD Charges	\$16.24
Feb 2005	HD Svc.Credit(s)	-\$1.08
March 2005	HD Charges	\$16.24
April 2005	HD Charges	\$16.24
May 2005	HD Charges	\$14.99
June 2005	HD Charges	\$14.99
July 2005	HD Charges	\$14.99
August 2005	HD Charges	\$14.99
Sept 2005	HD Charges	\$14.99
Oct 2005	HD Charges	\$14.99
Nov 2005	HD Charges	\$14.99
Dec 2005	HD Charges	\$14.99
Dec 2005	HD Svc.Credit	-\$2.70
January 2006	HD Charges	\$14.99
Feb 2006	HD Charges	\$14.99
March 2006	HD Charges	\$20.67
April 2006	HD Charges	\$17.99
May 2006	HD Charges	\$17.99
June 2006	HD Charges	\$17.99
July 2006	HD Charges	\$13.95
July 2006	HD Svc.Credit(s)	-\$31.94
August 2006	HD Charges	\$13.95

September HD Credit Amount: \$270.29

If you should have any questions about this matter or the credit amount issued, please feel free to contact me directly. Thank you for your patience and cooperation as OpenBand worked to address this matter. If you do not believe the issues you are experiencing have been resolved, please contact me immediately.

Warmest regards,



Sharon Hawkins
Director of Marketing and Communications
571-262-8603

From: Tom Wade [twade@armstrong.net]
Sent: Wednesday, December 14, 2005 2:03 PM
To: gardens3000-broadlands@yahoo.com; 'Pat Leader'; 'Mark Holliday'; 'Andy Garrich'; scott.ostergard@ntconnections.net; 'Roy Barnett'; 'Denise Harrover'
Subject: FW: FW: SW HOA letter - Scott Ostergard

Attachments: OBB Response1-14-05.pdf; Speed_Test_Enemies.pdf; Bundle_Comparison.pdf

Good afternoon again,

Sharon was kind enough to provide a soft copy of the January 2005 response along with attachments.

Tom

-----Original Message-----

From: Sharon Hawkins [mailto:Sharon.Hawkins@openband.net]
Sent: Wednesday, December 14, 2005 1:33 PM
To: twade@armstrong.net
Subject: Re: FW: SW HOA letter - Scott Ostergard

Tom,

I have attached soft copy of the letter and attachments you mentioned:

"Tom Wade" <twade@armstrong.net>

12/14/2005 01:26 PM

Please respond to
<twade@armstrong.net>

To <gardens3000-broadlands@yahoo.com>, "Pat Leader" <PLeader@vanmetrehomes.com>, "Mark Holliday" <MHolliday@vanmetrehomes.com>, "Andy Garrich" <AGarrich@vanmetrehomes.com>, <scott.ostergard@ntconnections.net>, "Roy Barnett" <rbarnett@vanmetrecompanies.com>, "Sharon Hawkins" <Sharon.Hawkins@openband.net>, "Denise Harrover" <dharrover@vanmetrecompanies.com>

cc

Subject FW: SW HOA letter - Scott Ostergard

Good afternoon to all,

Attached is the letter Scott authored last year in regards to the OpenBand fees. The hard copy letter was dated December 7, 2004.

I have in my files an eight page response from OpenBand dated January 14, 2005 (with twelve pages of attachments). Perhaps Sharon could pull it from her files and email it to everyone. It does, however, put to rest the declaration that the December 7th letter went unanswered.

Regards,
Tom Wade

-----Original Message-----

From: Jim Armstrong [mailto:jda@armstrong.net]
Sent: Friday, December 09, 2005 4:14 PM
To: Thomas Wade (E-mail)
Subject: FW: SW HOA letter - Scott Ostergard

[For your files.](#)

Jim Armstrong

Armstrong Management Services, Inc.
3949 Pender Drive, Suite 205
Fairfax, VA 22030
Phone: 703-385-1133
Fax: 703-591-5785

-----Original Message-----

From: Scott Ostergard [mailto:Scott.Ostergard@NTConnections.net]
Sent: Monday, November 22, 2004 7:08 PM
To: Jim Armstrong
Subject: SW HOA letter - Scott Ostergard

14 November 04

Response to Openband Proposal for Price Increase

In response to your request for a fiscal year 2005 rate increase; the Southern Walk Home Owners Association (SW HOA) is formally requesting a meeting to discuss the proposed increases. The meeting should be between SW HOA, Southern Walk Technology Committee (SWTECH), and Openband, and take place within the next 30 days. During this meeting all parties should be prepared to establish criteria and guidelines to provide an effective measurement of the quality of service as well as benchmarks for future rate modifications. We are providing the following research, documentation and calculations which reflect our own research into this issue.

Internet Access

Regarding Internet service, we would like to begin by clarifying a few key issues. First, Internet service, as defined by the Operating Agreement, is that which was conceived by the Defense Advanced Research Projects Agency (**DARPA**) and is a service that permits access to the worldwide system of computer networks. This service is not limited to the local Intranet or any one geographical area. Secondly, the terminology Comparable Provider as defined in accordance with section 1.1 Definitions and restated in Section 5.7 (a) paragraph 2 of the HOA Agreement reflects any comparison between Openband and a competitive service (Internet, television or telephone) must be based on residential class service.

As a direct result of these requirements and in accordance with the HOA Agreement, Exhibit I, Section 5.7 (a) paragraph 2, which specifies that the price for Internet services will be determined on a bit by bit basis, it is necessary and essential to establish a methodology by which fair and accurate measurements must be taken. As it stands, Openband has declared that residents of the SW community are receiving 10 MB up and down with bursts up to 100MB. The results from our residents on the attached pages clearly show a discrepancy between the proposed speeds and the reported speeds. It is our recommendation that a standard method for measuring residents Internet access speed be established in the following manner.

In order to provide an apples to apples comparison as performed in your price justification, we recommend developing a list of no less than 5 speed test sites which would be used to develop an accurate representation of residential Internet service access speeds. By eliminating the lowest and highest speed results we would then average the remaining three to establish an accurate benchmark. Both Openband and the SWTech committee will then submit this benchmark to the SW HOA monthly.

A second issue to be clarified is that of total system throughput. In accordance with Openband's marketing material, no resident will be subjected to shared access and each resident will receive consistent service during peak hours. To fairly and accurately verify this Openband statement, a measurement of total network throughput must be established, the duration by which the throughput is measured should not exceed 2 hours, a reasonable length of time to consider peak usage, and the total system utilization should not exceed 60%, a common industry standard. This report should be submitted to the SW HOA along with the monthly billing cycle.

The final point to be made regarding Internet service deals with the deceptive bit rate calculation. The upload speed of an ISP is largely irrelevant to everyday usage. The typical user uploads very small amounts of information. The download speed is where the true limitations are met. For example, in a typical search of the Internet, the user uploads a miniscule amount of data in the form of search terms. The search engine then downloads a considerably larger amount of data in the form of results. When the user clicks on a result, the URL is then uploaded (again, a very small amount of data) and the Web page is downloaded (potentially a very large amount of data.) The number of times a typical user will upload a large document is considerably smaller than the number of large documents the typical user will download. Thus, while upload speeds can be very important, the practice of averaging the two creates the illusion that typical access times for Openband will be considerably shorter. In truth, the typical access times will be most closely tied to download speeds.

Television

There are currently 3 major issues concerning television service that have been voiced by the resident's. These issues are signal quality, channel and package selection and refund policies. These issues have been raised numerous times to Openband both before and after the new system upgrade, but have yet to be resolved.

With regard to the signal quality, the SW HOA has continued to receive reports of poor signal quality. These reports show various channels fading from dark to light and sound levels changing depending on the selected channel. Specifically, reported during the past SW HOA meeting was the following:

- Channel 4 - NBC - video shifts darker to lighter and back
- Channel 21 - Sound excessively loud
- Channel 26 - PBS - Sound is significantly lower than other channels.

- HBO - sound cutting out completely every 5 minutes

It should be noted that the residents have consistently reported these issues to Openband.

In accordance with the contract, Openband is required to provide a service equal to or better than other residential comparable providers. More specifically, if competitive providers are offering a variety of channel packages, such as NFL Football package or On-Demand programming, Openband must as well. If Openband is unable to accommodate the addition of packaged programming equal to that of Comparable Providers then the price must reflect that.

The final issue to be presented with regard to television service is the written policy provided to the residents concerning refunds for service outages. The policy does not include a formula for calculating the amount of those refunds. However, anecdotally, it is possible to estimate the policy based on refunds provided to residents in the past. Residents have been provided refunds for the outages on a particular channel based on the following formula - (Monthly Charge to Customer/days in the month/number of channels provided) X (number of channels out X duration of outage in days). For example a monthly charge of \$48.74, and a 31 day month equals:

(\$48.74/31 days in the month/130 channels)

This provides a 1.2-cent refund per channel per day of outage. (A resident was provided an 11-cent refund based on 3 channels out for 3 days. This equates to 1.2 cents per channel per day.)

It is the SW HOA's opinion that it is unreasonable to calculate the refunds in this manner as it treats all channels as interchangeable. In truth, the loss of a channel is normally identified due to the desire of the resident to watch that channel. Television outage refunds should be calculated on a basis of complete service. If a resident is not receiving the full service for which they paid, then they should not be charged for the television service for the duration of the outage calculated daily. Furthermore, due to the residential payment structure and the SW HOA as the intermediary, all credits and refunds need to be in the form of a cashable check delivered to the individual's residence.

Telephone Service

Another issue at hand is that of the telephone service. Although an analysis of the cost of service reveals you have met the financial obligations of the contract, the overall service falls short of that provided by Comparable Providers.

In accordance with the contract, Verizon is the identified comparable service provider. However, Verizon offers numerous calling packages that are unavailable to Openband customers, packages such as nation wide long distance plans or Verizon's Friends and Family plan to name just a few. Residents in the SW community have brought it to our attention that they would like to have these services added to the total telephony package, services currently being offered by comparable providers. If these services cannot be provided then the price should reflect it accordingly.

Bundled Service

The final issue to be discussed must be that of Bundled Service. Virtually every service provider (Verizon, Adelphia, Star Power, and more) provides Bundled Service. As a result, Comparable Providers are offering like services at substantial discounts. OpenBand appears to be taking a bundles service and comparing it to the Al-La-Carte services of Comparable Providers. By doing this, OpenBand is skewing the reality of the cost of its service.

We appreciate your time and attention to the important matter. Please contact

[attachment "Openband Analysis.xls" deleted by Sharon Hawkins/OPB]

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Cost Analysis

<u>Actual Data Rates By OpenBand</u>		<u>Proposed Data Rates By OpenBand</u>	
Average cost per bit by other providers	\$ 0.0228734	Average cost per bit by other providers	\$ 0.0228734
Cost per bit by OpenBand	\$ 0.0273676	Cost per bit by OpenBand	\$ 0.0068200
70 % of Competitors Average	\$ 0.0160114	70 % of Competitors Average	\$ 0.0160114
80 % of Competitors Average	\$ 0.0182987	80 % of Competitors Average	\$ 0.0182987
90 % of Competitors Average	\$ 0.0205861	90 % of Competitors Average	\$ 0.0205861

Expected cost of OpenBand Service

3,450 x 70% - 80% - 90%	
Expected cost @ 70%	39.90
Expected cost @ 80%	45.60
Expected cost @ 90%	51.30

Expected cost of OpenBand Service

3,900 x 70% - 80% - 90%	
Expected cost @ 70%	160.11
Expected cost @ 80%	182.99
Expected cost @ 90%	205.86

	Up Speed	Down Speed	Average	Cost	Bit Cost
OpenBand Actual	2,781	2,203	2,492	68.20	\$ 0.02737
OpenBand Proposed	10,000	10,000	10,000	68.20	\$ 0.00682
StarPower / RCN - Mach5	800	5,200	3,000	49.95	\$ 0.01665
StarPower / RCN - Mach7	800	7,000	3,900	74.95	\$ 0.01922
EarthLink	128	3,000	1,564	39.95	\$ 0.02554
Adelphia - Basic	256	3,000	1,628	42.95	\$ 0.02638
Adelphia - Premier	512	4,000	2,256	59.95	\$ 0.02657

Bundled Service Cost Analysis

Service Provider / Tier	Type of Service Offered	Details	Bundled Cost	Al-La Cart
OpenBand - Bundled			\$ 144.95	\$ 144.95
** No discount for Bundled Service	TV	126 Channels / HD TV 9.99		\$ 58.19
	Phone	Local Calls / No Options		\$ 18.56
	Internet	2,500 / 3,500		\$ 68.20
StarPower - Bundled	Digital Teir		\$ 98.00	
	TV	145 Channels		
	Phone	Local Calls / 3 Way Calling / Long Distance Options		
	Internet - Mach 5	800 / 5,200		
StarPower - Bundled	Power PCI		\$ 137.00	
	TV	130 Channels + 2 Premium Channels (HBO, Show . . .)		
	Phone	Local Calls / 3 Way Calling / Long Distance Options		
	Internet - Mach 7	800 / 7,000		
Adelphia Bundled	Bronze Advantage		\$ 40.50	\$ 110.90
** Includes Internet and TV, No Phone Service	TV	120 Channels + 1 Premium (HBO, Show . . .)		\$ 64.95
	Phone	NA		
	Internet	256 / 3,000		\$ 45.95
Verizon	Freedom + Direct Tv		\$ 87.94	\$ 91.94
** TV through Direct TV	TV	225 Channels / 55 PPV / HD TV 7.99		\$ 39.99
	Phone	Local Calls / Long Distance Options		\$ 22.00
	Internet	128 / 768		\$ 29.95

Notes: Adelphia's HD TV is an
 All Service providers offer HD TV
 All internet service
 All Telephone service providers offer optional long distance plans that can not be obtained through OpenBand

Service Provider	Up	Down	Average	Monthly Cost	Monthly Cost Per Bit	Email Account	Web Space	PopUp Blocker	Anti Spam	Firewall	IP Available	Notes
OpenBand - Actual	3,400	4,400	3,900	68	\$ 0.01744	5	50 MB	N	N	N		Static IP a
OpenBand - Proposed	10,000	10,000	10,000	68	\$ 0.00680	5	50 MB	N	N	N		
Verizon	128	768	448	29.95	\$ 0.06685	9	10 MB	Y	Y	Y		Only resid
StarPower / RCN - Mach5	800	5,200	3,000	49.95	\$ 0.01665	4	10 MB	Y	N	N	Optional	Does not c
StarPower / RCN - Mach7	800	7,000	3,900	74.95	\$ 0.01922	4	10 MB	Y	N	N	Optional	Does not c
Primus												Does not c
Direct TV	50	500	275	60	\$ 0.21818	5					Optional	
EarthLink	128	3,000	1,564	39.95	\$ 0.02554	8	10 MB	Y	Y	Y	Y - free	Static IP a
Adelphia - Basic	256	3,000	1,628	42.95	\$ 0.02638	7	10 MB	Y	Y	Y	N	
Adelphia - Premier	512	4,000	2,256	59.95	\$ 0.02657	7	70 MB	Y	Y	Y	N	

Off Web 10/22/2004	Down	Up	Average	Average Cost Per Bit 70%	80%	90%	0.01601140	0.01829870	0.02058610
377/717	377	717	547	\$ 8.76	\$ 10.01	\$ 11.26			
303/1025	303	1025	664	\$ 10.63	\$ 12.15	\$ 13.67			
743/1687	743	1687	1215	\$ 19.45	\$ 22.23	\$ 25.01			
352/2872	352	2872	1612	\$ 25.81	\$ 29.50	\$ 33.18			
1633/1632	1633	1632	1632.5	\$ 26.14	\$ 29.87	\$ 33.61			
755/2703	755	2703	1729	\$ 27.68	\$ 31.64	\$ 35.59			
1426/2239	1426	2239	1832.5	\$ 29.34	\$ 33.53	\$ 37.72			
2300/1592	2300	1592	1946	\$ 31.16	\$ 35.61	\$ 40.06			
1424/2915	1424	2915	2169.5	\$ 34.74	\$ 39.70	\$ 44.66			
3125/1842	3125	1842	2483.5	\$ 39.76	\$ 45.44	\$ 51.13			
2306/2976	2306	2976	2641	\$ 42.29	\$ 48.33	\$ 54.37			
2445/2910	2445	2910	2677.5	\$ 42.87	\$ 48.99	\$ 55.12			
2190/3191	2190	3191	2690.5	\$ 43.08	\$ 49.23	\$ 55.39			
4336/1096	4336	1096	2716	\$ 43.49	\$ 49.70	\$ 55.91			
2539/2946	2539	2946	2742.5	\$ 43.91	\$ 50.18	\$ 56.46			
2508/3374	2508	3374	2941	\$ 47.09	\$ 53.82	\$ 60.54			
3508/2806	3508	2806	3157	\$ 50.55	\$ 57.77	\$ 64.99			
2017/4311	2017	4311	3164	\$ 50.66	\$ 57.90	\$ 65.13			
2804/4255	2804	4255	3529.5	\$ 56.51	\$ 64.59	\$ 72.66			
3367/6148	3367	6148	4757.5	\$ 76.17	\$ 87.06	\$ 97.94			
5824/5178	5824	5178	5501	\$ 88.08	\$ 100.66	\$ 113.24			
2203.90476	2781.66667	2492.78571		\$ 39.91	\$ 45.61	\$ 51.32			

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<u>Name</u>	<u>Address</u>	<u>Detailed TV Service Issues with Openband</u>	<u>Date reported</u>
<u>Derrick Bramblett</u>	<u>22165 Highview Trail Pl</u>	1) "Poor picture quality over-Compression on analog signals" 2) Unhappy that there is no option for ESPN Gameplan 3) "If Openband is allowed to operate under a monopoly the service should be perfect" As of now, there is nothing in it's place on Openband's network (Channel 415) . Does anyone know what we will get in it's place? Most major cable providers have a replacement such as HGTV HD, NatGeo HD or MTVHD already up and running. Other observations: - Pixelation on HD channels - No option for ESPN Gameplan	9/1/2006 9/1/2006 9/1/2006 9/1/2006 9/1/2006 9/1/2006 1/5/2007 1/6/2007 1/7/2007
<u>Richard Harsell</u>	<u>22105 Highview Trail Pl</u>	1) "TV service is not up to par with previous service providers " 2) " Openband, the analog channels are not very clear at all" 3) " The HD channels are decent except that there is frequent signal loss or pixelation" 4) "My belief is that we will never get a good of service as we could with OB having the monopoly in this area " Channel 29 in and out with picture	10/12/2006 10/12/2006 10/12/2006 10/12/2006 12/1/2006
<u>Junko Buxton</u>	<u>21971 Sunstone Ct</u>	1) "Channels 75 and 49 are very grainy" 2) Hold times very long when calling CS that I have given up calling Openband issue with Analog, no improvement	6/1/2006 6/1/2006 12/3/2006
<u>Lisa Kelly</u>	<u>West Dale Court</u>	1) "Since OB can't seem to resolve the analog quality issue" 2)" We moved to SW from north Broadlands, and analog reception was NEVER an issue with Adelphia" 3) "It doesn't seem like OB can fix the picture quality that's coming directly from the jacks" Our primary video issues have been: sound not matching video; pixellation; and and OB extending the free VOD trial period for > 1 month without informing the SW customers (and then refusing compensation because it was a "free" promotion). I have the same issue with two TV's one connected via Set-top box, another via wall/direct connect HD Picture issues, I'm experiencing all the problems you listed on channel 29 - TLC	9/1/2006 12/11/2006 12/11/2006 12/11/2006 12/11/2006 12/11/2006 12/16/2006 10/13/2006 11/12/2006
<u>Jen & Tim Conroy</u>	<u>Village Dr</u>	1) Picture quality is very poor on the analog side 2) We pay so much money and we have no choice	10/3/2006
<u>Richard McGinnis</u>	<u>43268 Sunderleigh Sq</u>	1) "continues analog and HD audio and video issues" 2) Set top boxes have issues	

Dave Lynes	Ainsley Court	1) "I too can confirm seeing the pixalation on the HD channels" 2) did anyone else notice that for a time yesterday the HD channel 401 was switched to another broadcast, I think it was the same as 403 (ABC). Not sure how long it lasted but it is ok this morning." July 24/06 I am not familiar with anything like this with Openband in the past... should be interesting though as they are about to launch the VOD service"	09/01/206
		HD TV has on-going video issues - picture format, channel 208 no local games	12/11/2006
Bob Russell	Ainsley Court	Audio is very high on multiple analog channels	11/25/2006
Carol Al Ahough	Wing Foot Ct	1) Picture will fade or just go to black 2) Customer service does not seem to fix the issues, but we are moving out of the country in the near future	3/21/2003
Franco Aguilon	40372 Milford Dr	1) 48 Mos on poor picture Quality...STILL NO Resolution 2) Customer Service reps place customer on hold for on hold for over 8 minutes	
Danny C. Davis	Tumble Tree Terrace	1) "Is it just me, or does the analog quality just go down the drain when it rains" 2) "Seems like OB did a poor job sealing/securing their lines" multiple issues with analog viewing - pixelation, bad audio	8/1/2006 9/1/2006 12/22/2006
		Is also a staff Member for Lori Waters	
Tom Herbert	Stone Stile Place	1) It seems that to accept the monopoly-type agreement and forfeit choice, we should get a significant discount. 2) "but I agree that the PRICE of these services is not competitive" 3) I wish there was some way to get a popular uprising to change the Openband charter to let us opt out.	
Tony & Lyndia Cole	43276 Sunderleigh Sq	1) 8000HD box, issue for over 12months, OB gav customer credit \$405, summer of 2006 and deployed 8300HD box 2) The Coles' sent an email to the SW HOA board stating that they will go forward with a class action law-suit	
Pat & Diane Brown	Sunstone Court	1) Analog audio and video issues	
Eriika & Dwayne Cotti	21970 Sunstone Court	1) It took almost 19 months to get a resolution from Openband. OB gave us two credits \$129 + \$309 for service issues 2) We still have audio issues, 401NBC HD @ 9PM audio was 3 seconds of a delay in picture 3) We now have a digital record and every day we have captured pixels on analog and HD channels 4) Sept power outage, bunker did not kick on and OB was offline for more than 33 minutes 5) extended hold times, July 22 (53 minutes) August 14 6) 09-17 @ 3:38PM Channel 401 gone	
Ken Bernard	21926 Windover Dr	1) Video Voice - out of sync during Redskins games on three separate Aug 26, 31 Sept 17 2) We pay this Monopoly too much money to be told that I can't be transferred to someone's voicemail. 3) Customer service related issues 4) Hold times and unresolved tickets opened due to poor TV service, 3 issues Aug to Sept	

Susan & Tom Hicks	Ridgeway Dr	1) video picture is fuzzy and sometime there is no audio at all on the analog channels 2) Customer service is non responsive	
John & Marlene Wench	Ridgway Dr	1) Picture on HD during football games is out of sync and pixels on the screen 2) On hold too long to get in touch with customer service reps, I have three kids and I can't be on hold for several minutes	
Mike & Tu Pullman	Stone Stile	1) Customer service is worthless and nothing gets resolved 2) Analog channels are horrible to watch 3) Everytime we get a bad thunderstorm our TV services are gone	
Brian Ruf	Ridgeway Dr	1) The picture quality is not what it should be, based on the price and 20+ year contract we have with Openband	
Cindi	Larchmont & Windover	started earlier than the 10th, I have been unable to watch 29 w/o some scramble for several days	11/12/2006
Belinda Haagsma	Village Dr	29 horrible picture***see email attachment from Belinda	11/14/2006
Eric Esteenz	Highview Trail	comedy central (34) has the same issues for at least a week, I've noticed the pixelation but it's not been horrendous yet	11/13/2006
Brian Beahmer	Stone Stile	208, local games blacked out, issues with analog	11/9/2006 10/27/2006 11/9/2006 10/13/2006
Greg Cox	Ridgeway	HD TV picture is cropped and does not seem to be transmitted correctly	
Han Flinch	Highview Trail	we did not receive any signal for channel 9 on Friday or Saturday Oct 6 & 7. On Sunday thru Tuesday (Oct 8 - 10) the picture on channel 9 was distorted, appearing to be a 16x9 aspect ratio signal squished into a 4x3 ratio. is occurred on a tv hooked up to a set-top box as well as a tv plugged straight into the analog cable outlet	10/8/2006
Barry Raney	Southern Walk Apt	1. TT 280779 opened 11/13/06 closed 2. TT 287201 opened 12/04/06 closed 3. TT 289789 opened 12/11/06 on hold for customer	11/13/2006
George Choi & Jennifer Thuy	Sunstone Court	except the tv service somtimes gets "jagged/choppy" and bounces in and out of the HD signal, not sure if that is an OB problem or the actually broadcasting of the signal; this can be frustrating when I am watching a football game or my favorite TV shows.	10/11/2006
Sean & Sherry McDaniel	Sunstone Court	Pictures have black and green boxes, Noggin moved, audio is out of sync with picture We don't bother to call customer service because you can never get a live person and if you do, they are no help at all	12/3/2006

Derrick Bramblett	22165 Highview Trail Pl	1) "Poor picture quality over-Compression on analog signals" 2) Unhappy that there is no option for ESPN Gameplan 3) "If Openband is allowed to operate under a monopoly the service should be perfect"
Richard Harsell	<u>22105 Highview Trail Pl</u>	1) "TV service is not up to par with previous service providers " 2) " Openband, the analog channels are not very clear at all" 3) " The HD channels are decent except that there is frequent signal loss or pixelation" 4) "My belief is that we will never get a good of service as we could with OB having the monopoly in this area "
Junko Buxton	21971 Sunstone Ct	1) "Channels 75 and 49 are very grainy" 2) Hold times very long when calling CS that I have given up calling Openband
Lisa Kelly	West Dale Court	1) "Since OB can't seem to resolve the analog quality issue" 2)" We moved to SW from north Broadlands, and analog reception was NEVER an issue with Adelphia" 3) "It doesn't seem like OB can fix the picture quality that's coming directly from the jacks"
Jen & Tim Conroy	Village Dr	1) Picture quality is very poor on the analog side 2) We pay so much money and we have no choice

Richard McGinnis	43268 Sunderleigh Sq	<p>1) "continues analog and HD audio and video issues"</p> <p>2) Set top boxes have issues</p>
Dave Lynes	Ainsley Court	<p>1) "I too can confirm seeing the pixilation on the HD channels"</p> <p>2)"did anyone else notice that for a time yesterday the HD channel 401 was switched to another broadcast, I think it was the same as 403 (ABC). Not sure how long it lasted but it is ok this morning." July 24/06 I am not familiar with anything like this with Openband in the past... should be interesting though as they are about to launch the VOD service"</p>
	24-Jul	
Carol Al Ahough	Wing Foot Ct	<p>1) Picture will fade or just go to black</p> <p>2) Customer service does not seem to fix the issues, but we are moving out of the country in the near future</p>
Franco Aguillon	40372 Milford Dr	<p>1) 48 Mos on poor picture Quality...STILL NO Resolution</p> <p>2) Customer Service reps place customer on hold for on hold for over 8 minutes</p>
Danny C. Davis	Tumble Tree Terrace	<p>1) "Is it just me, or does the analog quality just go down the drain when it rains"</p> <p>2) "Seems like OB did a poor job sealing/securing their lines"</p>

Tom Herbert	Stone Stile Place	<p>1) It seems that to accept the monopoly-type agreement and forfeit choice, we should get a significant discount.</p> <p>2) "but I agree that the PRICE of these services is not competitive"</p> <p>3) I wish there was some way to get a popular uprising to change the Openband charter to let us opt out.</p>
Tim & Amy Mechem	Milford	<p>1) HD Video quality issues - 7month, customer returned HD 3250 in Oct 05 (original service in May 2005)</p> <p>2) August 29 on hold for 6 minutes</p>
William & Lyndia Cole	43276 Sunderleigh Sq	<p>1) 8000HD box, issue for over 12months, OB gav customer credit \$405, summer of 2006 and deployed 8300HD box</p> <p>2) The Coles' sent an email to the SW HOA board stating that they will go forward with a class action law-suit</p>
Pat & Diane Brown	Sunstone Court	<p>1) Analog audio and video issues</p>
Eriika & Dwayne Cotti	21970 Sunstone Court	<p>1) It took almost 19 months to get a resolution from Openband. OB gave us two credits \$129 + \$309 for service issues</p>

- 2) We still have audio issues, 401NBC HD @ 9PM audio was 3 seconds of a delay in picture
- 3) We now have a digital record and every day we have captured pixels on analog and HD channels
- 4) Sept power outage, bunker did not kick on and OB was offline for more than 33 minutes
- 5) extended hold times, July 22 (53 minutes) August 14
- 6) 09-17 @ 3:38PM Channel 401 gone

Ken Bernard

21926 Windover Dr

- 1) Video Voice - out of sync during Redskins games on three separate Aug 26, 31 Sept 17
- 2) We pay this Monopoly too much money to be told that I can't be transferred to someone's voicemail.
- 3) Customer service related issues
- 4) Hold times and unresolved tickets opened due to poor TV service, 3 issues Aug to Sept

Susan & Tom Hicks

- 1) video picture is fuzzy and sometime there is no audio at all on the analog channels
- 2) Customer service is non responsive

John & Marlene Wench

Ridgway Dr

- 1) Picture on HD during football games is out of sync and pixels on the screen
- 2) On hold too long to get in touch with customer service reps, I have three kids and I can't be on hold for several minutes

Mike & Tu Pullman

Stone Stile

- 1) Customer service is worthless and nothing gets resolved
- 2) Analog channels are horrible to watch
- 3) Everytime we get a bad thunderstorm our TV services are gone

Brian Ruf

Ridgeway Dr

- 1) The picture quality is not what it should be, based on the price and 20+ year contract we have with Openband

8-Oct

Fox HD Channel (Channel 402) kept on losing HD signal / switching to analog signal ..
However, it keeps on happening with all HD channel

13-Jun

think openband provides a decent service, however, i think that the extra charges (for extra boxes, HD tier, movie channels, etc) are way too much

has anyone noticed that the analog cbs channel 9 appears to be a 16x9 picture squished into 4x3 (the image is tall and skinny)? this occurs on our regular 4x3 tube tv's without a cable box as well as with the cable box. i have a projector that i can resize the image with, and when i put it into 16x9 mode, the picture looks fine (but it should look wide and fat). last week (friday and saturday) we got no signal on channel 9, then the distorted image appeared on sunday. i am thinking they are taking the hd feed for some reason. i haven't yet opened a ticket but will shortly.

User ID	Customer Name	Street	Nature of TV issue	1st Date of reported issue
Pa2VA	Richard Harsell	Highviewl Trail	29 in and out with picture	11/10/2006
BelindaTH	Cindi	Larchmont & Windover	started earlier than the 10th, I have been unable to watch 29 w/o some scramble for several days	11/12/2006
L0stS0ul	Belinda Haagsma	Village Dr	29 horrible picture	11/14/2006
thepea2001	Eric	Highview Trail	comedy central (34) has the same issues for at least a week, I've noticed the pixelation	11/13/2006
lkelly	Cotti	Sunstone	29 picture is grainy, pixilated and no picture at times	11/12/2006
Merlin	Lisa Kelly	Westdale	I have the same issue with two TV's one connected via Set-top box, another via wall/direct connect	11/13/2006
db103	Lisa		HD Picture issues,	
	<u>Derrick Bramlett</u>	<u>22165 Highview Trail Place</u>	As of now, there is nothing in it's place on Openband's network (Channel 415) . Does anyone know what we will get in it's place? Most major cable providers have a replacement such as HGTV HD, NatGeo HD or MTVHD already up and running.	1/5/2007
			Other observations: - Pixelation on HD channels - No option for ESPN Gameplan	10/9/2006
bbeahmer	Brian Beahmer	Stone Stile	208, local games blacked out, issues with analog	10/27/2006
hberg	Donna			11/9/2006
southernwalkers	Greg Cox	Ridgeway	HD TV picture is cropped and does not seem to be transmitted correctly	10/13/2006
Go Skins				11/12/2006
Zeratul	Dave Lynes		HD TV has on-going video issies - picture format, channel 208 no local games	12/3/2006
sen25	Bob Russell		Audio is very high on multiple analog channels	11/25/2006
dcdavis	Danny Davis		multiple issues with analog viewing - pixelation, bad audio	11/10/2006
hflinch	Han Flinch	Highview Trail	we did not receive any signal for channel 9 on Friday or Saturday Oct 6 & 7. On Sunday thru Tuesday (Oct 8 - 10) the picture on channel 9 was distorted,	10/8/2006
	Junko Buxton	Sunstone	issue with Analog, no improvement	10/7/2006
	Barry Raney	Southern Walk Apt	1. TT 280779 opened 11/13/06 closed 2. TT 287201 opened 12/04/06 closed 3. TT 289789 opened 12/11/06 on hold for customer	

5.0 Exhibit A: Operating Agreement between Van Metre Homes and Openband

**OPERATING AGREEMENT
OF
OPENBAND AT BROADLANDS LLC
between
BROADLANDS COMMUNICATIONS, L.L.C.,
and
OPENBAND SPE II, LLC
as of
November 16, 2001**

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MEMORANDUM

Via UPS Delivery

TO: Larry Bensignor (w/ originals)
Tom D'Alesandro (w/out encl.)
Bob Woodruff
Cindy Stephens (w/ originals)
Karen Brinkmann
Eric Andrews
Brian Lubkeman

CC: Larry Freedman

FROM: Mark Pihlstrom *MP*

DATE: November 27, 2001

RE: Binders of Closing Documents -- Southern Walk at Broadlands Wired Community Transa

* VA BAR ONLY
** MA BAR ONLY
*** HI AND IL BAR ONLY
* IL BAR ONLY
** LEGISLATIVE, NO
*** NY BAR ONLY

Please find enclosed for your records a bound copy of the Closing Documents relating to the Southern Walk at Broadlands wired community transaction. Larry Bensignor and Cindy Stephens are also receiving original set of such documents.

Please contact Larry Freedman at (202) 939-7923 or me at (202) 939-7970 if you have any questions regarding any of the enclosed documents. Please also let me know if you need additional copies of any of the documents.

Best personal regards.

M.D.P.

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 *** NY BAR ONLY

LIST OF EXHIBITS

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EXHIBIT Y	PREMIUM SERVICES
EXHIBIT Z	SERVICE OFFICE RESERVE AREA LEASE
EXHIBIT AA	EXCLUSIVE MARKETING AGREEMENT
EXHIBIT BB	LAND RECORDS MEMORANDUM

Execution Copy

**OPERATING AGREEMENT
OF
OPENBAND AT BROADLANDS LLC**

This Operating Agreement (this "Agreement") of OpenBand at Broadlands LLC, a Virginia limited liability company (the "Company") is made as of November 16, 2001, (the "Effective Date") by and between Broadlands Communications, L.L.C., a Delaware limited liability company ("BAC") and OpenBand SPE II, LLC, a Virginia limited liability company ("OSPE"). All references to the parties collectively shall be the "Parties" and individually the "Party."

RECITALS OF FACT

A. The Company was formed pursuant to Articles of Organization filed with the Virginia State Corporation Commission on September 20, 2001.

B. The Company was formed to arrange for the construction of an Infrastructure and the provision of telecommunications services and related services for the residential community known as Southern Walk at Broadlands, located in Loudoun County, Virginia, with a legal description as set forth in Exhibit A.

C. The Company has been formed with two (2) members, (i) BAC, whose parent entity is Broadlands Associates, developer of Broadlands, and (ii) OSPE, whose parent entity is M.C. Dean, Inc.

D. The Members desire to adopt the following terms and conditions to govern the Company's affairs, conduct business and establish the relations of its Members. This Agreement sets forth the terms and conditions by which the Company will be governed.

E. No business has been conducted by the Company prior to the date hereof.

In consideration of the foregoing recitals, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree as follows.

**SECTION I
FORMATION, PURPOSE AND DEFINED TERMS**

1.1 Formation. The Members have formed this limited liability company by filing with the Virginia State Corporation Commission the Articles under the Act. This Agreement is subject to and governed by the Act and the Articles. In the event of any direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, or the provisions of the Articles, such provisions of the Act or the Articles, as the case may be, shall be controlling.

1.2 Name. The name of the Company shall be OpenBand at Broadlands LLC, until such time as the Members designate otherwise and file amendments to the Articles in accordance with applicable law.

1.3 Principal Place of Business. The principal place of business of the Company shall be 3725 Concorde Parkway, Suite 100, Chantilly, Virginia 20151 or at such other location as the Members may determine.

1.4 Business and Purposes. The purpose and business of the Company is to secure high quality telecommunications-related services for Homeowners and other residential and non-residential customers as stated more specifically herein, and, more specifically, to (i) facilitate the Construction to approximately one thousand one hundred (1,100) residential lots of the Development through the Construction Agreement, and, the operation of the System through the Services Agreement; (ii) take all action necessary to arrange for the Construction and provision of the Services and to enter into contracts for such purposes by and between the Company and the Homeowner's Association, and/or a Homeowner or Homeowners, (iii) to take all action necessary to arrange for the Construction and provision of the Services by entering into contracts for such purposes by and between qualified contractors and sub-contractors; (iv) to establish Infrastructure facilities to a point within reasonable proximity of any Person within the Service Area, but outside the Development, so that Services could be provided to such Person under the terms and conditions in accordance with the Three Agreements, including Section 2.1(h) of the Services Agreement; and (v) all other matters incident thereto.

1.5 Regulatory Intent. It is the intent of the Parties that the Company will not be deemed to be a regulated entity as any such regulation may otherwise be applicable to providers of the Services. Among other things, the Company is not intended to be the provider of Services to the public. Rather, the Parties have formed the Company to create a structure, in coordination with the Company's agreements with the HOA, for obtaining the provision of the Services to the Development. The Company intends that it will obtain the provision of the Services by entering into contracts, such as the Services Agreement, with qualified providers who themselves shall be compliant with applicable local, state and federal regulations to the extent such providers are regulated, and certified (if required). If, notwithstanding this intent, it is determined in a legal or regulatory forum having competent jurisdiction that the Company must comply with applicable local, state or federal regulation or that the structure of the Company as set forth herein is not permissible in order to effectuate the intent stated above, then, within a reasonable period of time thereafter in light of the then-present circumstances, the Parties will meet in good faith and agree to appropriate revisions to the Company's structure and agreements, including without limitation, revisions to the Three Agreements and a fair allocation of resulting additional expenses that are incurred.

The Parties desired not to enter into any direct vendor-vendee relationship with a service provider to the extent such a direct relationship might have resulted in the financial status of the vendor detrimentally impacting any Party. Moreover, the Parties have arranged the Company's structure to make it clear that the Company is a separate, viable, independent platform for securing the delivery of appropriate services to the Homeowners. The Company has a substantial capitalization comprised of among other things, cash provided by OSPE.

It is the Parties' intention that in the event of the bankruptcy of a construction contractor or service provider (i) the estate of the Company not be consolidated or otherwise combined with the estate of the bankrupt service provider or construction contractor or otherwise be subject to the jurisdiction of the bankruptcy court overseeing such bankrupt service provider or construction contractor; (ii) the consideration provided for under this Agreement to the Company (in the case of a purchase of assets) or to OSPE (in the case of a purchase of the Membership Interest) or BAC (in the case of a purchase of the Membership Interest) in exchange for any termination of the contractual relationship be found to be fair and reasonable; and (iii) the Company be permitted in the event of such bankruptcy to forthwith and without any delay or interference, replace the bankrupt service provider or construction contractor with a substitute service provider or construction contractor to maintain uninterrupted and unimpeded provision of communication services to the Company's customers.

1.6 Definitions. In this Agreement, the following terms have the following meanings:

"Act" shall mean the Virginia Limited Liability Company Act.

"Add-On Premium Services" shall mean those Premium Services that are elective by the Customer but are derived from and related to the Mandatory Services and are features or options that serve to enhance the utilization of the respective Mandatory Services, and are generally available only through the same provider as the provider of the Mandatory Service. For example, call-waiting is an Add-On Premium Service to Telephone Service and Home Box Office is an Add-On Premium Service to Video Service.

"Affiliate" with respect to any specified Person shall mean (a) any Person directly or indirectly controlling or under common control with the specified Person, (b) any director, officer, partner or trustee of the specified Person, and (c) any Person directly, indirectly or beneficially owning or controlling fifty percent (50%) or more of any class of voting securities of the specified Person.

"Agreement" shall mean this Operating Agreement of OpenBand at Broadlands LLC entered into by and between BAC and OSPE.

"Alternative Provider" shall mean a service provider engaged by the Company following a Level Two Condition or Level Three Breach or other Terminable Event by OpenBand. The Alternative Provider shall provide one or more of the following: (i) Telephone Service, (ii) Video Service and (iii) Internet Services.

"Ancillary Agreements" shall mean Easement One, Easement Two, Easement Four, the IRU, CC&R's, the HOA Agreement, the Exclusive Marketing Agreement, the Land Records Memorandum, and such other agreements that the Parties agree in writing to include in such definition.

"Articles" shall mean the Articles of Organization of the Company.

"Bankruptcy Action" shall mean any determination or action to file, permit the filing of, or convert to a petition or proceeding for relief under (i) Chapter 7 of the United States Bankruptcy Code, (ii) Chapter 11 of the United States Bankruptcy Code if the Chapter 11 Plan of Reorganization provides for the termination or modification of all or any material rights and obligations provided under this Agreement (it being understood and agreed by the Parties that termination or modification of any material right or obligation under this Agreement would constitute a material alteration of the transactions contemplated herein) or (iii) any state or other provision which provides for liquidation of all or substantially all of the debtor's assets.

"Budget" shall mean the projected budget for the Construction of the Infrastructure as set forth in Exhibit E to this Agreement, as it may be revised from time to time in accordance with the Agreement, the Services Agreement and/or the Construction Agreement.

"Builders" shall mean the builders purchasing lots within the Development on which they will build houses for sale to individual home buyers.

"Capital Account" shall mean, with respect to any Member, the Capital Account established, maintained and adjusted for such Member in accordance with the provisions of Regulation Section 1.704-1(b)(2)(iv) or other applicable provisions of the Code and the Regulations promulgated thereunder. After the initial Capital Contributions of the Members have been made, the initial Capital Accounts of the Members shall be as set forth in Exhibit L to this Agreement.

"Capital Contribution" shall mean, with respect to any Member, the total amount of cash and the fair market value of any other assets contributed to the Company, net of liabilities assumed or to which the assets are subject, with respect to such Member's Membership Interest.

"Capital Transaction" shall mean the sale or assignment of all or substantially all the assets of the Company, the financing or refinancing of Company debt, or any other extraordinary transaction materially affecting all or substantially all of the assets of the Company.

"CC&R's" shall mean the Declaration of Covenants, Conditions and Restrictions for Southern Walk at Broadlands, which is attached hereto as Exhibit H, including any future amendments or restatements.

"Change Order" shall mean a written instrument prepared and signed by the Company and Contractor stating their agreement upon a change in (i) the Construction Schedule (as defined in the Construction Agreement) and/or (ii) the scope of the Development and/or (iii) the Budget, and the consequences thereof.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or any corresponding provision or provisions of succeeding law.

"Company" shall mean OpenBand at Broadlands LLC.

"Construction" shall mean construction of the Infrastructure by Contractor.

"Construction Agreement" shall mean that certain Design and Construction Agreement, as of even date herewith, entered into by and between Contractor and the Company, which is attached hereto and made a part hereof as Exhibit S.

"Construction Schedule" shall mean the schedule to construct the Infrastructure prepared by Contractor in coordination with the Developer and incorporated into the Developer's schedule (as defined in Section 3.2(a) of the Construction Agreement), the initial version of which is attached to the Construction Agreement as Exhibit W, as it may be revised from time to time in accordance with the Construction Agreement.

"Contractor" shall mean M.C. Dean, Inc., in its capacity as the party engaged by the Company pursuant to the Construction Agreement.

"Controlling Party" shall mean an entity, or a group of individuals or entities that, with respect to either BAC or OSPE, as the case may be, is in possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of BAC or OSPE, as the case may be, whether through ownership of voting securities, by contract or otherwise. In the event of a Bankruptcy Action, it is the Parties intention that the Controlling Party in Bankruptcy shall be that Person who was the Controlling Party immediately prior to such Bankruptcy Action.

"Customer" shall mean any individual or entity that receives one or more Services within the Development, delivered by the Infrastructure, from the Company.

"Developer" shall mean Broadlands Associates, a Virginia general partnership.

"Development" shall mean that portion of the residential development commonly known as Southern Walk at Broadlands located in Loudoun County, Virginia, the legal description for which is stated, as well as a plat showing the location, in Exhibit A to this Agreement.

"Direct Competitor" shall mean an entity licensed and capable of providing the Services, and (i) currently in the business of providing telecommunication services including, without limitation, Telephone Services, Video Services or Internet Services, as applicable, or (ii) entering the business of providing telecommunication services, including without limitation, Telephone Services, Video Services or Internet Services, and in either case in a similar manner, to a residential customer base, in the Washington, DC Standard Metropolitan Statistical Area (the "Geographic Market"), and as to which the provision of such Services is not an ancillary line of business.

"Dissolution Notice" shall mean the notice given by one Party to the other Party that a Terminable Event has occurred and that the notifying Party intends to terminate this Agreement.

"Easement One" shall mean that certain Exclusive Easement for Telecommunications Services for Southern Walk at Broadlands by and among Developer, BAC, Broadlands Association, Inc. and HOA dated simultaneously herewith, which is attached as Exhibit J.

"Easement Two" shall mean that certain Exclusive Easement for Telecommunications Services for Southern Walk at Broadlands by and among BAC, the Company, Developer, Broadlands Association, Inc. and HOA dated simultaneously herewith, which is attached as Exhibit K.

"Easement Four" shall mean that certain Easement for Telecommunications Facilities for Southern Walk at Broadlands by and among Developer, OBV, OBM, Broadlands Association, Inc. and HOA dated simultaneously herewith, which is attached as Exhibit L.

"Effective Date" shall mean as of November 16, 2001.

"Exclusive Marketing Agreement" shall mean that certain agreement dated simultaneously herewith and entered into by and among the Company, OBV, OBM and Van Metre Homes at Broadlands, L.L.C., a copy of which is attached as Exhibit AA to this Agreement.

"Exclusivity Challenges" shall mean claims brought by a third party in any court or regulatory forum challenging the exclusive nature of Easement One, Easement Two, the mandatory provisioning of Services to the Homeowner's Association and/or Homeowners by the Company, or the mandatory inclusion of fees for Services in HOA dues, which third party claims are not the direct result of and not proximately caused by non-frivolous and documented deficiencies in Services, as defined by the Performance Matrix, and documented in the Company's records.

"Expedited Dispute Resolution" or "EDR" shall have the meaning set forth in Section 14.2 of this Agreement.

"Expenses" shall mean all expenditures related to Company operations, debts, liabilities and obligations, including without limitation, the Service Fee as owing to OpenBand pursuant to Section 4.9(c) of the Services Agreement.

"Extended Service Area" shall mean all areas beyond the Service Area that are served by the Service Office.

"Force Majeure" shall have the meaning set forth in Section 14.14 of this Agreement.

"Guaranteed Payments" shall mean the payments made by the Company to BAC as set forth in Section 5.1 of this Agreement.

"HOA Agreement" shall mean that certain agreement entered into by and between the Company and the Homeowner's Association, executed simultaneously herewith, attached as Exhibit I.

"Home" shall mean a single family detached home built within the Development.

"Homeowner" shall mean each purchaser or tenant of a residential dwelling in the Development.

"Homeowner's Association" or "HOA" shall mean the Southern Walk at Broadlands Homeowners Association, Inc., a Virginia non-stock corporation, and its successors and assigns.

"Indirect Competitor" shall mean an entity licensed and capable (or an entity which has publicly announced that it is planning to become licensed and capable) of providing such services in the Geographic Market and currently providing telecommunications services, including without limitation, Telephone Services, Video Services or Internet Services, as applicable, but in a different manner, or to a commercial customer base, or outside the Geographic Market, and as to which the provision of such Services is not an ancillary line of business.

"Infrastructure" shall mean the telecommunications infrastructure located within the Development that is used to deliver the Services. The Infrastructure is (i) owned by the Company (ii) licensed to OpenBand pursuant to the terms of this Agreement, and (iii) shall be designed and constructed by the Contractor pursuant to the terms and conditions of the Construction Agreement. Infrastructure does not include the Service Office.

"Interoffice Facilities" shall mean the physical pathways, conduits, and associated fiber optics from the Service Office (located on the Development) and/or the Internet access point on the Development to access points outside the Development to an incumbent telephone company tandem or end office (the "Point of Interface"), which shall be used to provide access via the Infrastructure to outside the Development. Subject to the Company's rights to the Reserved Fibers (as defined herein), the Interoffice Facilities will be and shall remain the property of OpenBand. The locations of the Interoffice Facilities shall be mutually agreed to by OpenBand and the Company. The Parties acknowledge and agree that OpenBand may install Interoffice Facilities in one or more of the follow configurations subject to its performance of the stated obligations attendant to each such option:

(1) OpenBand may install its own fiber optics facilities between the Service Office Building and the leased collocation or other space at the Point of Interface. In such case, OpenBand will reserve, and, within thirty (30) days from such installation, will transfer to the Company title to, the number of fiber strands and associated conduit and right-of-way (if necessary) necessary for use by an alternative local provider to serve the Development in the event of a Level Three Breach which will be expressly designated for use by an Alternative Provider ("Reserved Fibers"). The Company will grant to OpenBand a license to use the Reserved Fibers subject to a condition subsequent that OpenBand does not commit a Level Three Breach. Reserved Fibers shall include designated maintenance spares in equal numbers to those which OpenBand provides for itself. OpenBand may install fiber strands, in addition to those required for adequate capacity for current traffic, for future use at its option for whatever purposes it so chooses. These additional strands will not be considered in the calculation of Reserved Fibers.

(2) OpenBand and the incumbent telephone company each install fiber optics facilities up to an agreed upon meet point. In such case, OpenBand will reserve, and within thirty (30) days

from such reservation, will transfer to the Company title to, Reserved Fibers. Reserved Fibers shall include designated maintenance spares in equal numbers to those which OpenBand provides for itself. OpenBand will use best efforts to cause the incumbent telephone company to provide an equal number of Reserved Fibers on the incumbent telephone company's side of the meet point. OpenBand may install fiber strands, in addition to those required for adequate capacity for current traffic, for future use at its option for whatever purposes it so chooses. Such fiber strands will not be considered in the calculation of Reserved Fibers.

(3) OpenBand may request that the incumbent telephone company or a third party install fiber optic facilities from the Point of Interface to the Service Office. In such case, OpenBand will use best efforts to cause the incumbent telephone company or third party to provide, at minimum, an additional eight (8) spare fiber strands, beyond OpenBand's own operational and maintenance needs, for use by an alternative carrier.

(4) OpenBand may install its own fiber facilities between the Service Office Building and an OpenBand central office located outside of the Development; provided that such facilities are connected to facilities running from the OpenBand central office located outside of the development to the incumbent telephone company tandem or end office via option (1), (2), or (3) described above to form a complete, uninterrupted circuit from the Service Office Building to the Point of Interface. In such case, OpenBand will reserve the Reserved Fibers, and provide the Company permanent access to such Reserved Fibers pursuant to the indefeasible right of use agreement ("IRU") attached hereto as Exhibit D. Such Reserved Fibers will form a complete, uninterrupted circuit from the Service Office Building to the Point of Interface. Notwithstanding anything to the contrary, OpenBand shall provide access to the Reserved Fibers to the Company or the Alternative Provider (upon the Alternative Provider's agreement to submit all disputes regarding any access-related issues to Expedited Dispute Resolution) immediately upon OpenBand's commitment of a Level Three Breach. Reserved Fibers shall include designated maintenance spares in equal numbers to those which OpenBand provides for itself. OpenBand may install fiber strands, in addition to those required for adequate capacity for current traffic, for future use at its option for whatever purposes it so chooses. These additional strands will not be considered in the calculation of Reserved Fibers.

(5) OpenBand may request that the incumbent telephone company or a third party install fiber optic facilities from the Service Office Building to an OpenBand central office located outside of the Development that has established connectivity with the incumbent telephone company tandem or end office via option (1), (2), or (3) described above. In such case, OpenBand will use best efforts to cause the incumbent telephone company or third party to provide, at minimum, an additional eight (8) spare fiber strands, beyond OpenBand's own operational and maintenance needs, for use by an alternative carrier.

As part of OpenBand's interconnection arrangements with the incumbent telephone company or third party described above, including initial fiber order, OpenBand shall use best efforts to secure spare fiber, which shall be considered part of the Reserved Fiber, from the incumbent telephone company or third party as part of its ordinary requirements for maintenance spares. In the event of a Termination by BAC resulting from a Terminable Event, OpenBand shall relinquish and assign to any Alternative Provider any and all such Reserved Fiber of sufficient capacity to serve the Development and, in the event OpenBand utilizes option (4) or

(5) described above, shall maintain and/or establish, as the case may be, uninterrupted connectivity of such Reserved Fiber from the Service Office Building to the incumbent telephone company end office or tandem, until such time as the Alternative Provider has the ability to deploy such facilities itself, including authorization from the incumbent telephone company or third party to use such Reserved Fiber. In addition, in such event OpenBand will use best efforts to assist the Alternative Provider in obtaining the incumbent telephone company's or third party's authorization to use the Reserved Fiber provided by such incumbent telephone company or third party.

"Inter-Connection Facilities" shall mean fiber optics or wireline facilities from the Service Office Building and/or the Internet access point on the Development to access points on the boundary of the Development used to serve OpenBand subscribers outside the Development. OpenBand will request necessary rights-of-way over property within the Development and owned by Developer for the placement of such facilities up to the Development boundary, and approval of such request shall not be unreasonably withheld, but may be reasonably conditioned on, among other things, avoiding interference with Alternative Providers and land use, aesthetic and architectural considerations. The Parties acknowledge that the Developer granted to OpenBand certain rights to use such Inter-Connection Facilities on the Development pursuant to Easement Four. Inter-Connection Facilities shall be the sole property of OpenBand and are not part of the Infrastructure.

"Internet Services" shall mean a service which permits access to the worldwide system of computer networks as originally conceived by the Defense Advanced Research Project Agency (DARPA) and as continues to evolve. Technically it is distinguished by its use of the Internet Protocol (IP), offering local and global connectivity and applications. IP based applications, such as email, www, hypertext, browsing, dial transfer, Internet chat, and Internet telephony, are considered Internet applications. Since both security monitoring and automation and control services are planned to be IP based they are considered Internet applications for the purposes of this Agreement, whether or not they are actually IP based when implemented. For Development residential subscribers, under mandatory subscription, the network connection at the Home will be 100 MB Ethernet over optical fiber. As part of OpenBand's Annual Report (delivered in accordance with Section 2.2(b) of the Services Agreement), OpenBand shall summarize the natural technological progress or evolution of Internet Services for the purpose of including such evolved service within the meaning of this definition. Within fifteen (15) days of the delivery of such report to the Company, the Parties will meet to discuss potential changes to this definition. If, within sixty (60) days of the delivery of such report to the Company, the Parties fail to agree on a modification to this definition as a result of such progress or evolution, the Parties shall submit such dispute to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement.

"Land Records Memorandum" shall mean that certain Memorandum of Homeowner Association Contract and Notice of Inclusion in Mandatory Homeowner Assessments for Telecommunication Services by and between Developer and HOA dated simultaneously herewith, which is attached as Exhibit BB to this Agreement

"Lease" shall mean the lease from the Developer as landlord to OpenBand as tenant, as fully set forth in Exhibit C to this Agreement. BAC shall cause Developer to enter into the Lease.

"Lender" shall mean the Developer's first lien development lender. As of the date hereof, the Lender is Residential Funding Corporation.

"Main Distribution Frame" ("MDF") shall mean the large steel framework or its equivalent, consisting of vertical upright members used to terminate local telephone feeder cables on one side and switching or other equipment on the other side. The MDF serves as a termination point where individual cable pairs are cross-connected to specific switching or other equipment.

"Mandatory Services" shall mean the Telephone Services, Internet Services and Video Services for which residents pay as a part of their required HOA fees in accordance with the HOA agreement as detailed in Exhibit B as of the date hereof. Wherever evolved services are included within the definitions of Telephone Services, Internet Services or Video Services (as set forth in each respective definition), and such evolved service is a replacement for same then the evolved service shall be included within the meaning of Mandatory Services. Notwithstanding the foregoing, if the Company and OpenBand determine through the service evolution determination procedure set forth in the definition of Telephone Services that (i) wireless services have evolved into the successor technology and (ii) wire-line services are abandoned (subject to the proviso in the following sentence) by OpenBand, then Mandatory Services shall include such evolved wireless services. If wireless services are provided in addition to, but not in lieu of, wire-line services, then Mandatory Services shall not include such wireless services; provided, however, that with respect to a reasonable transition period Mandatory Services may include both wireless and wire-line services to the extent the Company and OpenBand mutually agree that both wireless and wire-line services are required to be provided in tandem in order to effectuate such evolved wireless service. Mandatory Services are referred to as "Platform Services" in the HOA Agreement.

"Mandatory Subscription" shall mean the required payment for those Mandatory Services required to be purchased by the HOA and/or Homeowners pursuant to the HOA Agreement.

"Member(s)" shall mean any member of the Company.

"Membership Interests" shall mean the Membership Units designated in Exhibit M attached to this Agreement (as it may be amended) and set forth opposite the Members' names divided by the total number of all issued and outstanding Membership Units. When used in this Agreement, Membership Interests shall be deemed to include Membership Units.

"Membership Units" shall mean one or more units out of one hundred (100) authorized units of the Company owned by each respective Member. Each Membership Unit represents one percent of the ownership in the Company. The percentage of ownership is computed by dividing a Membership Unit by the total of all issued and outstanding Membership Units. The authorized number of Membership Units may be modified upon the unanimous approval of the Members.

"Minimum Guaranteed Payment" shall have the meaning set forth in Section 5.2(g)(i).

"OBM" shall mean OpenBand Multimedia, LLC, a Virginia limited liability company.

"OBV" shall mean OpenBand of Virginia, LLC, a Virginia limited liability company.

"OpenBand" shall mean OBM and OBV jointly and severally. The use of such term shall further be construed to mean (i) OBV, where the Services to be provided are regulated telephone service; and (ii) OBM where the Services to be provided are not related to telephone service.

"OSPE" shall mean OpenBand SPE II, LLC, a Virginia limited liability company.

"Outside Customer" shall mean a customer of OpenBand that (i) is located outside of the Development; and (ii) receives Services via the Service Office or Infrastructure. A customer who is not located in the Development and receives Services at such location, but who also receives Services as a Homeowner or Resident shall be deemed an Outside Customer with respect to the Services provided to the location not in the Development.

"Performance Criteria" shall have the meaning set forth in Section 2.2 of the Services Agreement.

"Person" shall mean any individual, partnership, corporation, association, trust, limited liability company or other legal entity, whether foreign or domestic, and its representatives, successors and assigns, where the context requires.

"Premium Services" shall mean those Services provided or made available to the Development and/or to Customers on an elective basis that are not identified as Mandatory Services, including, without limitation, Add-On Premium Services. The Premium Services to be initially provided are described in Exhibit Y.

"Profits and Losses" for each fiscal year or other period shall mean an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), but computed with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of Profits and Losses shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(c) Any increases or decreases to the value of Company property resulting from revaluations pursuant to Regulations Section 1.704-1(b)(2)(iv)(f) shall be added to or subtracted from such taxable income or loss;

(d) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the value of such property determined for purposes of the Capital Accounts of the Members, notwithstanding that such value may differ from the adjusted basis of such property;

(e) Appropriate adjustments to the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall be made to comply with Regulations Section 1.704-1(b)(2)(iv)(g)(3); and

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such distribution shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses.

Notwithstanding any other provisions in this Agreement, any items of income, gain, loss or deduction specially allocated shall not be taken into account in computing Profits and Losses.

"Regulations" shall mean the income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Related Party" shall have the meaning set forth in Section 3.7.

"Remote Equipment Building" shall mean the building that may be built, or caused to be built, by OpenBand (at OpenBand's sole election) within the Development and occupied by OpenBand in order to house the Remote Switch Module. In the event OpenBand elects to build the Remote Equipment Building in the Development, (i) the Parties, Developer (which shall be caused to do so by BAC) and OpenBand (caused by OSPE) shall mutually agree to its location in the Development; and (ii) BAC shall cause Developer to enter into the Remote Equipment Building Lease. The Remote Equipment Building shall not be part of the Infrastructure and shall be part of the Service Office.

"Remote Equipment Building Lease" shall mean the lease that shall be granted from the Developer, as Landlord, to OpenBand, as Tenant if OpenBand elects to build a Remote Equipment Building in the Development. The Remote Equipment Building Lease shall be (i) upon the same terms and conditions, including without limitation, rent, as the Lease, and (ii) entered into only if contemporaneously the Remote Equipment Building Reserve Area Lease is also being executed and delivered. BAC shall cause Developer to enter into the Remote Equipment Building Lease, if the Remote Equipment Building is built.

"Remote Equipment Building Reserve Area" shall mean that area located inside the Remote Equipment Building (if OpenBand elects to build a Remote Equipment Building on the Development), consisting of one hundred (100) square feet. The Remote Equipment Building Reserve Area is part of the Remote Equipment Building (if OpenBand elects to build a Remote

Equipment Building on the Development). If OpenBand elects to build a Remote Equipment Building on the Development, then, (i) upon completion of constructing the Remote Equipment Building, OpenBand shall execute the Remote Equipment Building Reserve Area Lease; and (ii) the floor plans of the Remote Equipment Building will show the intended location of the Remote Equipment Building Reserve Area; it is agreed and understood by the Parties that such intended location may be amended by OpenBand to an equivalent location at OpenBand's sole election. If the Remote Equipment Building is built by OpenBand then OpenBand shall make available the floor plans, together with drawings showing, if applicable, (i) the cable count, (ii) block designations of both the vertical and horizontal sides of the MDF, and (iii) the optical fiber termination layout for both cable television and Internet access.

"Remote Equipment Building Reserve Area Lease" shall mean the lease executed by OpenBand, as landlord, and the Company, as tenant, for the Remote Equipment Building Reserve Area for use by the Company or an Alternate Provider in the event of Level Three Breach of the Services Agreement, if OpenBand elects to build the Remote Equipment Building in the Development.

"Remote Switch Module" shall mean the telephone switching and transmission equipment located in the Remote Equipment Building (if OpenBand elects to build a Remote Equipment Building in the Development) connected via digital loops to the Service Office Building. The Remote Switch Module shall not be part of the Infrastructure.

"Reserved Fibers" shall have the meaning ascribed to it in the definition of "Interoffice Facilities."

"Revenue" shall mean any and all gross revenue and fees, including the monetary equivalent value of services, goods or equipment exchanged for services, goods or equipment with other businesses such as common carriers, charged by (a) the Company for Services to the HOA and Customers within the Development, and (b) OpenBand for Services to Outside Customers. The following shall not constitute Revenue under this Agreement: (i) revenue for Services generated by OpenBand and its Affiliates for engineering and design services, construction, repair and maintenance services for Customers outside of the Development, (ii) revenue for installation and support of in-home wiring and equipment, (iii) taxes, regulatory surcharges and fees as currently listed in Exhibit U, which may be amended upon approval by the Company and OpenBand (not to be unreasonably withheld, conditioned or delayed) (iv) interest on financial reserves, and (v) reciprocal compensation payments received from local exchange carriers. Revenue shall include access fees received from inter-exchange carriers. Consistent herewith, (i) revenue received by M.C. Dean, Inc. for work it has performed outside of the Development shall not constitute Revenue and (ii) revenue received by M.C. Dean, Inc. for Services performed in the Development shall be considered Revenue if OpenBand is to perform such Services under the Services Agreement and it requested or provided a referral to M.C. Dean, Inc. to perform such service. All (a) legal fees and expenses paid by the Company to defend Exclusivity Challenges, and (b) awards or judgments paid by the Company as a result of a successful Exclusivity Challenge (collectively, "Exclusivity Challenge Payments") shall be deducted and excluded from the computation of "Revenue".

"Service Area" shall mean (1) the mixed use project known as Broadlands (and not just the Development) and (2) such property that is or becomes annexed into the project known as Broadlands and that is not currently owned by Developer and is currently undeveloped ("Annexed Property") as shown on the plat map attached as Exhibit F. Annexed property shall not be considered part of the Service Area to the extent it is outside the Service Area shown on the plat map attached as Exhibit A.

"Service Fee" shall mean the fee paid to OpenBand pursuant to and as more specifically described in Section 4.8 of the Services Agreement, for providing the Mandatory and Premium Services.

"Service Office" shall mean (i) the building (the "Service Office Building") in which the telephone circuits are switched automatically to connect a calling station to a called station and where other transmission and interconnect hardware is located; (ii) the Inter-Connection Facilities; (iii) the switching equipment located in the Service Office Building; (iv) the Remote Switch Module; (v) Service Office Reserve Area; (vi) the SMATV; (vii) the Remote Equipment Building; (viii) Remote Equipment Building Reserve Area; (ix) Video headend; (x) Internet headend and (xi) the Interoffice Facilities. The Service Office will be and shall remain the property of OpenBand at all times and the Company shall have no ownership interest in the Service Office. BAC shall cause Developer to enter into the Lease. The Parties acknowledge that the term "Service Office" is used here to initially describe a facility serving the Development which will in fact be a telecommunications remote terminal.

"Service Office Reserve Area" shall mean (i) at a minimum, a one hundred twenty (120) square foot area (assuming the total area of the Service Office is a minimum of five hundred (500) square feet) selected by OpenBand within the Service Office Building and (ii) those areas within the Service Office Building where the Video headend and Internet headend reside. OpenBand shall execute the Service Office Reserve Area Lease, simultaneously with the execution of this Agreement, which is attached hereto as Exhibit Z of this Agreement. The floor plans of the Service Office Building will show the intended location of the Service Office Reserve Area; it is agreed and understood by the Parties that such intended location may be amended by OpenBand upon the Company's reasonable approval (such approval not to be unreasonably conditioned, withheld or delayed). OpenBand shall make available the floor plans, together with drawings showing, if applicable, (i) the cable count, (ii) block designations of both the vertical and horizontal sides of the MDF, and (iii) the optical fiber termination layout for both cable television and Internet access.

"Service Office Reserve Area Equipment" shall mean the portion of the MDF or its equivalent that terminates copper exchange cables in the Service Office that serve Customers. OpenBand acknowledges and shall ensure the following: (i) that such cables are segregated on separate terminal blocks and MDF verticals from the cables or facilities that serve subscribers outside the Development; (ii) that the MDF arrangement will permit an Alternative Provider to install additional equipment and terminal blocks on the horizontal side of the MDF to enable such Alternative Provider to cross-connect to the cable pairs in the Development; (iii) that all optical fiber local distribution cables and interoffice optical fiber facilities shall terminate on a Fiber Distribution Interface ("FDI"), Light Guide Cross-connect ("LGX") or equivalent panel located within the Service Office or elsewhere in the Development; and (iv) that the FDI, LGX

or equivalent panels, and access thereto, shall be constructed to facilitate an Alternative Provider's interconnection.

"Service Office Reserve Area Lease" shall mean that lease attached as Exhibit Z to this Agreement.

"Services" shall mean the Services specifically delineated as Mandatory and Premium, provided over the term of this Agreement and the Services Agreement. Wherever evolved services are included within the definitions of Telephone Services, Internet Services or Video Services (as set forth in each respective definition), such evolved services shall be included within the meaning of Services.

"Services Agreement" shall mean that certain Multi-Media Services Agreement, of even date herewith, entered into by and between OpenBand and the Company, which is attached hereto and made a part hereof as Exhibit G.

"SMATV" shall mean Satellite Master Antenna Television. The SMATV is not part of the Infrastructure, but is part of the Service Office. The location of the SMATV shall be mutually agreed upon by the Parties, subject to all local, state and HOA requirements, including without limitation, zoning, permits, architectural designs, signal surveys and archaeological releases.

"SMATV Lease" shall mean the lease from the Developer, as landlord, to OpenBand, as tenant, and acknowledged by Broadlands Association, Inc., as more fully set forth in Exhibit V to this Agreement. BAC shall cause Developer to enter into the SMATV Lease.

"Supplemental Services" shall mean all communication services other than those services identified as Mandatory and Premium Services, respectively. Wherever evolved services are included within the definitions of Mandatory and/or Premium Services (as set forth in each respective definition), such evolved services shall not constitute Supplemental Services. Supplemental Services shall include advertisement revenue received by the Company for advertising on the Development's Intranet.

"System" shall mean the operating system (including, but not limited to the Infrastructure, and the Service Office) used in delivering the Services to the Development, the Service Area and the Extended Service Area. For purposes of delivering the Services to the Development, the System shall be supported by the Infrastructure and the Service Office that will be designed and constructed by the Contractor pursuant to the terms and conditions of the Construction Agreement. For purposes of delivering the Services to the Development, the System shall be operated by OpenBand for Homeowners as a subcontractor of the Company, pursuant to the Services Agreement. The terms "Video System," "Telephone System" and "Internet System" shall refer to the segment or portion of the System which supplies video service, telephone service or Internet access, respectively, to the Development.

"Telephone Services" shall mean the service that transmits voice, data and/or video over the traditional circuit switched public switched telephone network (PSTN) and packet switched wireless cellular/Personal Communications Services (PCS) networks. Also included are the

many applications and adjunct services such as voice mail, call waiting, caller ID, conference calling, call forwarding, and local and long distance dialing. As part of OpenBand's Annual Report (delivered in accordance with Section 2.2(b) of the Services Agreement), OpenBand shall summarize the natural technological progress or evolution of Telephone Services for the purpose of including such evolved service within the meaning of this definition. Within fifteen (15) days of the delivery of such report to the Company, the Parties will meet to discuss potential changes to this definition. If, within sixty (60) days of the delivery of such report to the Company, the Parties fail to agree on a modification to this definition as a result of such progress or evolution, the Parties shall submit to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement. Subject to the immediately following sentence, the Parties agree that service that transmits voice, data and/or video over packet switched wireless cellular/Personal Communications Services (PCS) networks shall be considered a Supplemental Service. If, however, the Company and OpenBand determine through the service evolution determination procedure set forth herein that (i) wireless services have evolved into the successor technology and (ii) wire-line services are abandoned (subject to the proviso in the following sentence) by OpenBand, then Mandatory Services shall include such evolved wireless services. If wireless services are provided in addition to, but not in lieu of, wire-line services, then Mandatory Services shall not include such wireless services; provided, however, that with respect to a reasonable transition period Mandatory Services may include both wireless and wire-line services to the extent the Company and OpenBand mutually agree that both wireless and wire-line services are required to be provided in tandem in order to effectuate such evolved wireless service.

"Three Agreements" shall mean this Agreement, the Services Agreement and the Construction Agreement.

"Three-Way Agreement" shall mean the agreement to be entered into among the Company, OpenBand and a Homeowner, as contemplated in the HOA Agreement.

"Transaction Documents" means the Three Agreements and the Ancillary Agreements.

"Transfer Agreement" shall mean Easement Two.

"Upgrade Request" shall have the meaning set forth in Section 2.13(d) of the Services Agreement.

"Video Services" shall mean the service that provides traditional video programming throughout the community in either analog or digital format. This includes programming sources received via satellite and off air local transmission. Also included are advanced services such as pay per view, video on demand, interactive television, gaming, video on demand and web enabled television. As part of OpenBand's Annual Report (delivered in accordance with Section 2.2(b) of the Services Agreement), OpenBand shall summarize the natural technological progress or evolution of Video Services for the purpose of including such evolved service within the meaning of this definition. Within fifteen (15) days of the delivery of such report to the Company, the Parties will meet to discuss potential changes to this definition. If, within sixty (60) days of the delivery of such report to the Company, the Parties fail to agree on a

modification to this definition as a result of such progress or evolution, the Parties shall submit such dispute to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement.

SECTION II MEMBERS RIGHTS AND OBLIGATIONS

2.1 Members. The Members of the Company are set forth in Exhibit M. Additional Members of the Company may be admitted only upon the unanimous consent of Members owning all of the Membership Interests. The structure, terms and conditions of the sale or offer of Membership Interests to additional Members shall be as approved by all of the Membership Interests.

2.2 Membership Interest. Each Member's Membership Interest shall be as set forth in Exhibit M, as it may be amended from time to time, in accordance with this Agreement.

2.3 Limitation on Other Activities. The Parties agree that the Company shall be the exclusive means by which they and their Affiliates provide Services to Customers in the Development and that any such opportunity is a Company opportunity. Any Member may engage in or possess any interest in other business ventures of any nature and description, independently or with others, except that, unless this Agreement is terminated under Article VII herein, no Party or its Affiliates shall engage in or have or own any interest in other business ventures of any nature and description, independently or with others, that provides telecommunication services to Customers within the Development. Notwithstanding anything herein to the contrary, the Parties acknowledge and approve the entry into a similar transaction at Lansdowne on the Potomac by certain of the Parties or their affiliates. The business plan of OpenBand and its Affiliates is to provide services to customers outside of the Development using the Service Office. Except as to Revenue calculation pursuant to Section 5.1 of this Agreement and Section 4.8 of the Services Agreement, neither the terms of this Agreement, the Services Agreement nor the Construction Agreement shall apply to the provision of such services to customers outside of the Development. Notwithstanding the foregoing, this Section 2.3 shall not apply to the Company, BAC and/or OSPE, or any of each of their Affiliates, to the extent OSPE or OpenBand or their Affiliates elect not to provide Services pursuant to Sections 9.2 and 9.3 hereof.

2.4 No Right to Withdraw. No Member shall have any right to voluntarily resign or otherwise withdraw from the Company without the unanimous written consent of the remaining Members.

2.5 Powers of Members. Members shall have the powers and authority conferred upon them pursuant to the Act and this Agreement. Members shall have the right to attend all meetings of the Members. The management of the Company shall be by the Executive Committee, the Administrator and the Members in accordance with this Agreement.

2.6 Voting by Members. For matters to be decided by the Members, the affirmative vote of Members holding all of the Membership Interests (entitled to vote at such time, subject to Section 2.15 of this Agreement) shall be necessary to decide an issue; provided that, by way of

clarification and without limiting the foregoing, a Member's absence at a meeting shall not limit or otherwise effect the unanimity requirement contained in this Section 2.6.

2.7 Limited Authority of Members. Except as expressly provided in this Agreement or authorized by the Members or the Company pursuant to a written agreement, no Member shall have the authority to take or engage in any action in its capacity as a Member to bind the Company in any manner.

2.8 Consent of Members in Lieu of Meeting. Any action which may be taken at any meeting of the Members may be taken without a meeting, without prior notice and without a vote, if a written consent, setting forth the action so taken, is signed, in person or by proxy, by the holders of one hundred percent (100%) of the Membership Interests entitled to vote at such time, subject to Section 2.15 of this Agreement. Such consent shall be delivered to the Company and shall be filed with the minutes of the meetings of Members in the records of the Company. Every written consent shall bear the name and date of signature of each Member's representative who signs such consent.

2.9 Meetings; Notice. Regular or special meetings of the Members shall be held from time to time, at such place and time specified by the Members owning at least one-half of the Membership Interests upon at least ten (10) business days prior written notice to the other Members.

2.10 Waiver of Notice by Members. Whenever any notice is required to be given to any Member under this Agreement or any provision of law, a waiver of such notice, signed by a Member's representative, whether before or after the time of the meeting, by the Member entitled to such notice, shall be deemed equivalent to the giving of such notice. The attendance of a representative of a Member at a meeting shall constitute a waiver of notice, except where a Member's representative attends a meeting and said representative objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any meeting of the Members needs to be specified in any waiver of notice of such a meeting.

2.11 Quorum. At all meetings of the Members, the presence of Members owning 100% of the Membership Interests (entitled to vote at such time, subject to Section 2.15 of this Agreement) shall constitute a quorum for the transaction of business.

2.12 BAC Obligations. Notwithstanding anything to the contrary in this Agreement, with respect to those obligations that relate to the obligation of BAC to cause Developer to act or fail to act in a certain manner, such liability of BAC hereunder shall only apply to all parcels of real estate then owned by Developer in the Service Area and only with respect to such period of ownership of each such respective parcel of real estate.

2.13 Conduct of Meetings. Any Member may call meetings of the Members to order and may act as Chairman of the meeting. A Member shall record notes and prepare minutes of the meeting. A record of all actions, meetings or proceedings of the Members shall be maintained in a Company minute book.

2.14 Participation. Members may participate in any meeting either in person or by means of a conference telephone or similar communications equipment provided all Persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence in person at the meeting.

2.15 Member Decisions on Extraordinary Matters. In addition to any actions required by law, the following Company actions shall require the approval of Members holding all of the Membership Interests and not approval by just those Members entitled to vote:

- (a) Any decision that significantly alters the nature, character or scope of the business of the Company, including without limitation, the structure of the Company or a significant addition to the Services already provided.
- (b) Any decision to sell, transfer or otherwise dispose of all or substantially all of the assets of the Company.
- (c) Any merger or acquisition involving the Company.
- (d) Any decision to seek or obtain protection from creditors or relief from debts, including without limitation, under the United States Bankruptcy Code or state bankruptcy or insolvency laws.
- (e) Any decision to lend or borrow money and all agreements for the making or receipt of loans or the extension of credit or incurring of debt by the Company, including, but not limited to, the guarantee of the debt of another and the grant of security interests in or the placing of liens on the Company's income, revenue, accounts receivable, equipment or any other assets or property.
- (f) Approving all contracts with another Member or its Related Parties and any amendments (including without limitation with respect to the Construction Agreement, Change Orders) and granting any consents or waivers.
- (g) Granting the use of or any rights in Easement Two to any Person or altering, modifying or diminishing the license to use any rights in Easement Two by OBM or OBV (or their Affiliates, successors or assigns). Notwithstanding the foregoing in this Section 2.15(g), only the approval of BAC shall be required to approve Company actions in accordance with Section 2.14 of the Services Agreement or in the event of a Level Three Breach; provided that compensation, if any, received for the provision of the Company's rights in Easement Two in accordance with the provisions of Section 2.14 of the Services Agreement shall be deemed Revenue of the Company.
- (h) Entering into any agreement with a third party to (i) provide Mandatory, Premium or Supplemental Services to the Development or (ii) grant access to the Infrastructure. Notwithstanding the foregoing in this Section 2.15(h), only the approval of BAC shall be required to approve Company actions in accordance with Section 2.14 of the Services Agreement or in the event of a Level Three Breach; provided that compensation, if any, received for any

such agreement in accordance with the provisions of Section 2.14 of the Services Agreement shall be deemed Revenue of the Company.

(i) Requiring OSPE to make additional Capital Contributions pursuant to Sections 4.2(iii) or (iv) of this Agreement.

2.16 Limitation of Liability of Members. The liability of Members is deemed limited to the maximum extent such liability may be limited as permitted under the Act.

SECTION III OPERATIONAL MANAGEMENT OF THE COMPANY

3.1 Executive Committee . The Company shall be Member-managed, but the Members shall, subject to the provisions of this Agreement which expressly reserve rights in the Members, vest the general management of the Company in a four-person Executive Committee, which shall oversee and manage, by itself or by and through the Administrator as set forth herein, the development and operations of the Company. BAC and OSPE shall each appoint two persons to the Executive Committee. Laurence Bensignor and Robert Woodruff shall initially serve as the Executive Committee appointees for BAC. William Dean and Max Kipfer shall initially serve as the Executive Committee appointees for OSPE. BAC and OSPE may, at any time, change the persons each Party has selected by written notice to the other to become effective as provided in the notice, except as otherwise provided herein. Unless otherwise provided in this Agreement, decisions of the Executive Committee shall be made by the written consent of a majority (i.e., three of four) of the persons then serving on the Executive Committee. The Executive Committee shall be responsible for (i) appointing and removing the Administrator, pursuant to Section 3.2, (ii) reviewing and approving the Budget and Contractor requisitions under the Construction Agreement (for this Section 3.1 (ii), approval only requires the signature of one BAC member of the Executive Committee and the Administrator), (iii) reviewing and approving the Infrastructure design and plan and specifications during the initial construction of each phase of the Development, and subsequent to the construction, reviewing and approving the granting of rights to any party to the enjoyment of Easement Two; provided that with respect to Easement Two, only the approval of BAC shall be required to approve Company actions in accordance with Section 2.14 of the Services Agreement or in the event of a Level Three Breach, (iv) generally reviewing and overseeing the timing of the construction of the Infrastructure, its subsequent upgrades, and the overall operations of the Company, (v) approving the prosecution, defense or settlement of any third party lawsuits, (vi) approving the selection and removal of the Company's public accounting firm (which shall initially be Watkins, Meegan Drury) (vii) approving decisions regarding the types and amount of insurance the Company will maintain, (viii) approving the channel selection for Video Service programming for the Development or similar material changes in selection of service offerings for any other Service within the Development, (ix) maintaining the minutes of the meetings of the Members and the Executive Committee in one or more books provided for that purpose, (x) ascertaining that all notices to Members are duly given in accordance with the provisions of this Agreement, the Act, or as may be required by law, (xi) approving the installation schedule of the Infrastructure during construction of the Development, (xii) monitoring (subject to Section 3.8 of this Agreement) to ensure compliance with the Performance Criteria (as defined in the Services Agreement), (xiii) performing all specific duties and exercising such authority as may be delegated or assigned to the Executive Committee by the Members, and (xiv) selecting third party providers to provide Supplemental Services in the event that OpenBand declines to provide same pursuant to Section 2.1(c) of the Services Agreement.

3.2 Office of the Administrator . The Administrator shall report to the Executive Committee. The Administrator shall hold office until his or her successor has been duly appointed by the Executive Committee or until such Administrator's death, resignation, or termination. William Dean shall serve as the initial Administrator. Any successor Administrator will be subject to approval by the Executive Committee, (such approval not to be unreasonably

withheld, conditioned or delayed), and will be selected from a list of representatives provided by OSPE (the "OSPE List") as long as there has not been a purchase of the Infrastructure by BAC pursuant to Section 7.9. The Administrator's successor shall be selected within thirty (30) calendar days from the date in which the former Administrator no longer holds office in accordance with this Agreement. The Administrator may resign at any time by giving thirty (30) calendar days written notice of such resignation to the Executive Committee. Unless otherwise specified in such written notice, such resignation shall take effect on the designated date. Acceptance of the resignation shall not be necessary to make it effective. William Dean, or any other party serving as Administrator (to the extent such person was selected from the OSPE List) may be terminated by the affirmative vote of two of the persons serving on the Executive Committee if there has not been a purchase of the Infrastructure by BAC pursuant to Section 7.9. William Dean or any other person serving as Administrator to the extent such person was selected from the OSPE List shall be immediately terminated as Administrator, if OSPE, OpenBand or the Contractor files a Bankruptcy Action. Notwithstanding anything contained herein to the contrary, (i) the BAC-appointed persons serving on the Executive Committee shall handle all matters on behalf of the Company (including without limitation filing of claims) related to any bankruptcy of OSPE, Contractor and/or OpenBand; and (ii) the OSPE - appointed persons serving on the Executive Committee shall handle all matters on behalf of the Company (including without limitation filing of claims) related to any bankruptcy of BAC and/or Developer.

3.3 Duties of the Administrator. Subject to the direction and supervision of the Executive Committee, the Administrator shall supervise and control all of the day-to-day business affairs of the Company in the ordinary course of the Company's business. Consistent with and subject to the foregoing, the duties of the Administrator shall include, but are not limited to, (i) appointing agents and hiring employees of the Company, prescribing their responsibilities, duties and compensation and delegating authority, (ii) signing, executing and acknowledging, on behalf of the Company, all legal documents or instruments (including, without limitation, to authorize equipment purchases and operating expenditures) necessary in the ordinary course of the Company's business, (iii) authorizing, approving and paying all expenditures not specifically requiring approval of the Executive Committee pursuant to Section 3.1 of this Agreement and issuing checks to individuals or entities who perform authorized services to the Company including but not limited to fees due the appropriate Parties under the Construction Agreement, the Services Agreement and/or this Agreement, (iv) arranging for the provision of "as-built" drawings and plans for the Development, (v) ensuring all necessary licenses and permits are obtained by appropriate parties, (vi) ensuring that a system is in place for preparing trouble reports and tracking resolution of customer complaints, (vii) ensuring all necessary regulatory approvals are obtained and that all service providers are appropriately certified and qualified, subject to Section 1.5 of this Agreement, (viii) supervising the Company's financial books and records, (ix) opening and maintaining the Company's bank accounts, (x) keeping track of the Company's accounts receivable and payable, (xi) causing the Company's tax returns to be prepared and filed, (xii) preparing and maintaining capital accounts and accounting for the financial events of the Company, (xiii) authorizing letters of credit and draws against same, (xiv) preparing and maintaining the Company's financial statements, (xv) serving as the custodian of the Company's financial records, books and accounts as well as the official seal of the Company and affixing the seal of the Company to all necessary legal documents, (xvi) keeping a record of the post office address of each Member, (xvii) signing, at

the request of the Members or the Executive Committee, certificates for Membership Interests of the Company, the issuance of which shall have been approved by the Members, (xviii) keeping possession of the Membership Interest records of the Company, (xix) arranging for the execution of all duties incident to building the Infrastructure and operating the Infrastructure, (xx) reviewing all technical, engineering and design specifications and requirements for the maintenance, repair and/or replacement of the Infrastructure, (xxi) establishing and maintaining at all times a financial reserve to be held by the Company in an amount equal to twenty-five thousand (\$25,000.00) dollars, and (xxii) performing all other duties and exercising such other authority not otherwise assigned to the Executive Committee or Members under this Agreement and/or as may be delegated or assigned by the Executive Committee to the Administrator. The Administrator shall owe a fiduciary duty to the Members while performing the duties identified in this Agreement. The Administrator may delegate to others one or more of the Administrator's duties, but no such delegation shall affect the Administrator's responsibility or duty. The Administrator and/or the Administrator's designee shall be the only person(s) authorized to sign checks or withdraw funds from the Company's accounts, on behalf of the Company.

3.4 Administrator's Report to the Executive Committee. The Administrator shall prepare and submit a written report to the Executive Committee, at least quarterly during construction of the Development (with the first report due January 31, 2002) and annually after construction is substantially complete on (i) the progress of the construction of the Infrastructure, (ii) any technical problems of the Infrastructure and proposed solutions, (iii) a summary of all customer complaints and operating performance measures with respect to the use of any telecommunication service sufficiently detailed, at a minimum, to permit evaluation of the performance metrics contained in the Services Agreement and Construction Agreement, (iv) the financial results and conditions of the Company that relate to Revenues, loans and Capital Contributions, and (v) the business plans of the Company. If, in the opinion of the Executive Committee (in accordance with Section 3.8), the reports required by this Section 3.4 disclose any performance deficiencies, the Executive Committee, notwithstanding the above, shall be entitled to receive such reports on a monthly basis. Notwithstanding anything contained herein to the contrary, no report shall contain marketing data unrelated to the purposes of such report data. If any report is not delivered (or is substantially incomplete) within thirty (30) days of the due date, no monetary distributions shall be made to OSPE as provided under Section 5.1 until a complete report is delivered.

3.5 Subcontractors and Employees. The Administrator may from time to time subcontract for services or hire employees (including, without limitation, an assistant administrator to, among other things, respond to inquiries, prepare reports and submit reports) as it deems necessary to perform the duties of the Company, subject to the terms of this Agreement and consistent with the responsibilities and duties set forth in Section 3.3.

3.6 Salaries. The salaries of the employees of the Company, if any, shall be determined by the Administrator. The salary of the Administrator, if any, shall be determined by the Executive Committee.

3.7 Conflicts of Interest. No contract or other transaction, other than a transfer governed by Section 8.4, between the Company and one or more of its Members, or between the Company and any Affiliate, other corporation, partnership, association or other organization in

which one or more of the Company's Members has a financial interest ("Related Party"), shall be void or voidable or in any way affected solely because it is with a Related Party or solely because such Member is present at or participates in a meeting of the Members (or committee thereof) which authorizes the contract or transaction, or solely because its votes are counted for such purpose, if the material facts as to its relationship or interest and as to the contract or transaction are disclosed to the Members and the contract or transaction is specifically approved by other Members holding all of the Membership Interests. Any and all contracts subject to this Section shall be approved at a meeting that complies with Section 2.11 of this Agreement.

3.8 Decisions Concerning Affiliate Contracts. Notwithstanding any other provisions to the contrary in this Agreement, all consents, approvals and other decisions (including the exercise of inspection rights, determination of compliance, and decisions concerning enforcement) to be made under all contracts, easements, leases or other agreements between the Company and OSPE or its Affiliates shall be decided and implemented on behalf of the Company solely by the Executive Committee members appointed by BAC, in the exercise of their good faith discretion; provided, however, that with respect to Easement Two such rights may only be exercised in the event of a Level Two Condition or a Level Three Breach. Notwithstanding any other provisions to the contrary in this Agreement, all consents, approvals and other decisions (including the exercise of inspection rights, determination of compliance, and decisions concerning enforcement) to be made under all contracts, easements, leases or other agreements between the Company and BAC or its Affiliates (including the exercise of inspection rights, determination of compliance, and decisions concerning enforcement) shall be decided and implemented on behalf of the Company solely by the Executive Committee members appointed by OSPE, in the exercise of its good faith discretion.

3.9 Utilizing Affiliates. Subject to the terms of this Agreement, the Company may hire employees or utilize the services of Affiliates of the Company or third Parties to perform services for the Company, including but not limited to, construction, engineering, design, facility operation, insurance, financing (if approved by the Members), record keeping, data processing, contract management and other administrative activities, subject to the terms of the Services Agreement, the Construction Agreement and this Agreement. Reasonable disclosure of such utilization shall be made to the Executive Committee. The validity of any transaction, agreement or payment involving the Company and any Affiliate of the Company permitted by the terms of this Agreement (including but not limited to Section 3.7) shall not be adversely affected solely by reason of the relationship between the Company and such Affiliate or the approval of a transaction, agreement or payment by the Company. Payment for services performed by Affiliates of the Company may be in amounts and on terms equivalent to what could be obtained by the Company in arm's-length transactions with non-affiliated Parties performing comparable services.

3.10 Dissolution of Executive Committee.

(a) Sale of Homes. Upon the sale of the one thousandth (1,000th) Home in the Development by the builder to a consumer home purchaser (this figure shall be reduced one-for-one for each deduction in the total number of Homes in the Development prior to January 31, 2007, to accommodate affordable dwelling units as such deduction is reported by Developer), the Executive Committee shall be dissolved and the Company shall subsequently be managed by the Administrator, provided, however, the Members shall continue to make decisions on extraordinary matters, pursuant to Section 2.15 of this Agreement. Upon dissolution of the Executive Committee, the duties contained in Section 3.1 (except as provided in this Section) shall become the duties of the Administrator.

Notwithstanding anything stated herein to the contrary, after dissolution of the Executive Committee, (i) the Members shall retain the right to take all actions regarding Sections 3.1(i), 3.1(ii), 3.1(iii), 3.1(iv), 3.1(xi), 3.1(xii) and 3.1(xiv); (ii) the determination of compliance with (including the exercise of any inspection rights), and enforcement of, all contracts between the Company and OSPE or its Affiliates shall be decided solely by BAC on behalf of the Company; (iii) the determination of compliance with (including the exercise of any inspection rights), and enforcement of, all contracts between the Company and BAC or its Affiliates shall be decided solely by OSPE on behalf of the Company and (iv) all decisions in connection with the technical performance reviews and other competitiveness standards contained in Sections 2.2, 2.7, 2.12 and 2.13 of the Services Agreement shall be decided solely by BAC on behalf of the Company.

(b) Loss of Mandatory Subscription. Upon the loss of Mandatory Subscription for each and every Service, the Executive Committee shall be dissolved and the Company shall subsequently be managed by the Administrator, provided, however, the Members shall continue to make decisions on extraordinary matters, pursuant to Section 2.15 of this Agreement. Upon dissolution of the Executive Committee, the duties contained in Section 3.1 (except as provided in this Section) shall become the duties of the Administrator. Notwithstanding anything stated herein to the contrary, after dissolution of the Executive Committee, (i) the Members shall retain the right to take all actions regarding Sections 3.1(ii), 3.1(iii), 3.1(iv), and 3.1(xi); (ii) the determination of compliance with (including the exercise of any inspection rights), and enforcement of, all contracts between the Company and OSPE or its Affiliates shall be decided solely by BAC on behalf of the Company; (iii) the determination of compliance with (including the exercise of any inspection rights), and enforcement of, all contracts between the Company and BAC or its Affiliates shall be decided solely by OSPE on behalf of the Company and (iv) all decisions in connection with the technical performance reviews and other competitiveness standards contained in Sections 2.2, 2.7, 2.12 and 2.13 of the Services Agreement shall be decided solely by BAC on behalf of the Company.

3.11 Bankruptcy Action. Upon a Bankruptcy Action by (i) OpenBand during the term of the Services Agreement, or (ii) Contractor during the term of the Construction Agreement, (x) OSPE's representatives on the Executive Committee shall have their voting rights suspended, and (y) OSPE's membership vote regarding Company matters shall be suspended, and (z) the Administrator may be removed, at the election of BAC, and replaced by BAC.

3.12 Audit Rights. The Parties acknowledge that under Section 5.3 of the Services Agreement, the Company has certain audit rights. The review, approval and/or dispute of such audits and the information to be addressed therein is to be conducted on behalf of the Company by (a) the members of the Executive Committee appointed by BAC, or (b) if the Executive Committee has been dissolved, by BAC.

3.13 Easement Two. Pursuant to the Transfer Agreement, Easement Two was granted by BAC to the Company, utilizing the rights under Easement One. The grant of Easement Two shall not be treated as a Capital Contribution, but as a separate transfer by BAC to the Company pursuant to the Transfer Agreement.

SECTION IV CAPITAL CONTRIBUTIONS AND FINANCIAL OBLIGATIONS OF MEMBERS

4.1 Initial Capital Contributions/Financial Security.

(a) **BAC Contribution.** On the date hereof, BAC shall make an initial Capital Contribution of twenty-five dollars (\$25.00) in cash.

(b) **OSPE Contribution.** On the date hereof, OSPE shall make an initial Capital Contribution of seventy-five dollars (\$75.00) in cash. In addition, OSPE shall contribute as a Capital Contribution all funds necessary to construct the Infrastructure, including without limitation, to pay the Company's obligations under the Construction Agreement, consistent with, and in an amount not to exceed, the Budget. In furtherance thereof, OSPE shall post the security (the "Security") required under Sections 4.1(e). Pursuant to Section 5.2 of the Construction Agreement, if a portion of a requisition is in dispute, then such disputed portion of the requisition is not yet due and payable. Accordingly, the Capital Contribution required to fund such disputed portion is not due and owing until the dispute is resolved.

(c) **Defaults Regarding Contributing Capital Contributions.** OSPE is not liable for any Capital Contribution if Contractor has not submitted a requisition and such requisition has not been approved, all pursuant to Section 5.2 of the Construction Agreement; once approved, OSPE shall be responsible for the timely contribution of such Capital Contribution ("Contribution Obligation"). Without limiting or altering the above obligations, if OSPE receives written notice of an Event of Default in its Contribution Obligations ("Contribution Default"), including but not limited to the failure of timely posting of its Contribution Obligations ("Contribution Default Notice"), OSPE shall have forty-five (45) calendar days from such Contribution Default Notice to cure such Contribution Default ("Contribution Default Cure Period"). The Contribution Default Cure Period shall be the exclusive cure period applicable to a Contribution Default. The procedures set forth in Sections 7.3 and 14.1 of this Agreement shall not apply to a Contribution Default; provided, however, that OSPE may assert within the time frame provided pursuant to Section 7.2(b) any good faith dispute it may have regarding the Contribution Default Notice in an EDR proceeding pursuant to Section 14.2 of this Agreement ("EDR Dispute"). The pendency of such EDR Dispute shall not affect or delay the right of BAC, on behalf of the Company, to (i) draw down the Letter of Credit or Escrow (as the case may be), if the Contribution Default is not cured during the Contribution Default Cure Period or

(ii) file and prosecute a claim or claims against OSPE's Surety Bond(s) if there is a default under the Construction Agreement, unless and until there is a final and binding determination ("Final Determination") in the EDR expressly suspending such rights; BAC shall not be entitled to seek any Contribution Default Additional Remedy, other than those Contribution Default Additional Remedies described in (i) and (ii) of this sentence, prior to a Final Determination of any EDR proceeding timely commenced. If, however, a Final Determination is issued finding that the draw of the Letter of Credit or Escrow (as the case may be) was improper, BAC shall return the amount of such security in dispute within ten (10) business days from such Final Determination unless the EDR Arbitrator decides otherwise. If OSPE does not cure such Contribution Default within the Contribution Default Cure Period and subject to Section 14.2 of this Agreement (without limiting BAC's rights to draw down the Letter of Credit or Escrow (or if there has been a default under the Construction Agreement) to file and prosecute a claim or claims against OSPE's Surety Bond(s) if the Contribution Default is not cured during the Contribution Default Cure Period), then without prejudice to any other rights or claims BAC may have, including without limitation, those rights set forth in Section 7.2(b), (i) BAC, on behalf of the Company, shall have the right to draw down the entire amount of the existing Letter of Credit and place the proceeds into Escrow to be applied as set forth in Section 4.1(f)(ii)(C), (ii) OSPE's representatives on the Executive Committee shall have their voting rights suspended, and (iii) OSPE's membership vote regarding Company matters shall be suspended, (iv) the Administrator may be removed, and (v) BAC, on behalf of the Company, shall have the right to file and prosecute a claim or claims against OSPE's Surety Bond(s) ("Bond Claim") (if there has been a default under the Construction Agreement) (collectively, the "Contribution Default Additional Remedies"). If a Contribution Default occurs and remains uncured after the Contribution Default Cure Period, and unless there is a Final Determination of the EDR Dispute to the contrary, then, without prejudice to the Contribution Default Additional Remedies, such Contribution Default shall constitute a Terminable Event pursuant to Section 7.2 of this Agreement.

(d) The funds sufficient to build the Infrastructure are stated in the Budget, which Budget is hereby approved by the Members. The Budget is, and any amendments thereto shall be, based upon the cost of Construction without indirect expenses, and with a profit of one dollar (\$1.00), consistent with the guaranteed maximum price Construction Agreement. The Construction Agreement provides, *inter alia*, that each September 1, the Contractor and the Company shall commence discussions on the scope of work to be performed in the following calendar year in connection with the Development work projected to be performed by the Developer and the portion of the Budget to be allocated to such entity (on a fixed and not maximum price basis). Such fixed, allocated portion is referred to as the "Annual Budget Requirement". If greater portions of the Infrastructure are constructed during a year than contemplated in the Annual Budget Requirement, the Members and the Contractor will meet after such year is over, consistent with Section 5.1 of the Construction Agreement and Section 5.6 of this Agreement, and agree on the revised Annual Budget Requirement for that completed year and expanded scope of work. If fewer portions of the Infrastructure are constructed during a year than contemplated in the Annual Budget Requirement, the estoppel certificate (provided for in Section 5.6 of this Agreement) will so acknowledge and the following year's Annual Budget Requirement will reflect such accordingly. The Parties will negotiate and agree to an adjustment to the Budget to reflect any net increased cost to OpenBand to the extent that the Developer's build-out of the Development (i) exceeds five (5) years and six (6) months from the

date of this Agreement; or (ii) materially increases the number or materially changes the location of sub-division sections from what is anticipated as of the Effective Date. Any disagreements over the adjustment shall be resolved by EDR.

(e) Security. For purposes of this Section 4.1(e), the obligations to post Security to secure OSPE's Capital Contribution obligations set forth in Section 4.1(b) shall be divided into the following time periods: (a) the time period commencing on the Effective Date and ending on December 31, 2002 ("Year One"), (b) the period commencing on January 1, 2003 and ending on the date the Infrastructure is tested and ready to provide Mandatory Services to the one thousandth (1,000th) Home in the Development ("Middle Period"), and (c) the period commencing on the first day after the last day of the Middle Period and lasting for the remainder of the Construction ("Remaining Period"). For each such period, OSPE shall provide security for its obligations in two forms: (a) security for the current year's work ("Current Year Security"), and (b) security for subsequent and additional obligations ("Additional Security"). OSPE has the right (a) to place cash into an Escrow Account (as defined in Section 4.1(e)(i)(A) below) in place of, or partially in place of, the Letter of Credit and/or Surety Bond, (b) to use any combination of (i) a Letter of Credit and Escrow for Current Year Security, or (ii) a Letter of Credit, Escrow or Surety Bond for Additional Security, (c) to post a Letter of Credit in place of, or partially in place of, an Escrow or Surety Bond, or (d) to place a Surety Bond in place of, or partially in place of, a Letter of Credit or Escrow for Additional Security. Subject to the foregoing, OSPE shall have, in its sole discretion, the right to substitute or combine at any time (even during a Current Year), the form of the Current Year Security and/or Additional Security; provided, however, the form selected by OSPE shall be in a form similar to the one attached hereto as (A) Exhibit T if utilizing a Surety Bond as a substitution or in a combination; (B) Exhibit N if utilizing a Letter of Credit as a substitution or in a combination; or (c) Exhibit Q if utilizing an Escrow as a substitution or in a combination and otherwise satisfies the terms and conditions in this Section 4.1(e) related to such type of security.

(i) Current Year Security.

(A) Year One Period. Within thirty (30) days of the Effective Date, OSPE shall present to the Company either an executed letter of credit, substantially similar to the one attached hereto as Exhibit N ("Letter of Credit") and from a financial institution reasonably acceptable to BAC, or a funded escrow account, in form similar to the one attached hereto as Exhibit Q ("Escrow"), or a combination thereof (collectively, the "Liquid Security"). The Liquid Security posted with respect to Year One shall be in an amount equal to the sum of (a) one hundred fifty percent (150%) of the Year One Annual Budget Requirement (the "Reducing Amount"), and (b) one hundred twenty percent (120%) of the projected Annual Budget Requirement for the time period January 1, 2003 through December 31, 2003 (the "Standby Amount"). If the Liquid Security is posted in the form of a Letter of Credit, then (a) OSPE shall make monthly Capital Contributions of cash from its own funds sufficient in amount to fund that month's requisition by the Contractor pursuant to the Construction Agreement and OSPE shall not be entitled to have the Company draw down the Letter of Credit, and (b) in the event of a Contribution Default entitling BAC to draw down the Letter of Credit under Section 4.1(f) below, BAC shall draw down the Letter of Credit for the sum of (a) the portion of the Reducing Amount which is the difference between (i) the face amount of the Letter of Credit attributable to the Reducing Amount, minus (ii) the amount of Capital Contributions actually made by OSPE in

cash with respect to Year One's Annual Budget Requirement, and (b) the Standby Amount. If, on the other hand, the Liquid Security is in the form of cash deposited into the Escrow, then OSPE shall be entitled each month, upon Company approval of the tendered requisition from the Contractor, to have the escrow agent under the Escrow withdraw from the Escrow an amount equal to the approved requisition and deliver said funds to OSPE, which OSPE shall receive in trust and deposit with the Company, and the Company shall pay the approved requisition. Notwithstanding the above, the aggregate of all withdrawals from the Escrow during the year for such purpose shall not exceed one hundred percent (100%) of the Year One Annual Budget Requirement. At such time as OSPE posts a replacement Letter of Credit which does not renew the existing Letter of Credit, or funds an Escrow, for the next Current Year Security, the old Letter of Credit or Escrow shall be returned to OSPE. The Parties agree that although Section 4.1(b) limits the Capital Contributions of OSPE with regard to funding the Construction to the Budget (in light of the guaranteed maximum price Construction Agreement), no such limit shall apply with respect to the amount of the Current Year Security required to be posted during Year One under this Section 4.1(e)(i) if the Construction to be performed during Year One has not been completed.

(B) Middle Period. As of December 31, 2002, OSPE shall adjust the amount of the Letter of Credit or Escrow (as the case may be) that was posted as Security for Year One pursuant to Section 4.1(e)(i)(A) such that the Letter of Credit or Escrow (as the case may be) equals one hundred twenty percent (120%) of such projected Annual Budget Requirement for 2003. Such Annual Budget Requirement and a narrative description of the scope of work is described in Exhibit E. Such Letter of Credit or Escrow is referred to as the "Current Year Security." On December 1st of each succeeding year within the Middle Period, OSPE shall similarly post either a Letter of Credit or an Escrow for an amount equal to one hundred twenty percent (120%) of such projected Annual Budget Requirement for such following year. The Parties agree that although Section 4.1(b) limits the Capital Contributions of OSPE with regard to funding the Construction to the Budget (in light of the guaranteed maximum price Construction Agreement), no such limit shall apply with respect to the amount of the Current Year Security required to be posted during the Middle Period under this Section 4.1(e)(i) if the Construction has not been completed. If the Current Year Security is in the form of a Letter of Credit, then OSPE shall make monthly Capital Contributions of cash from its own funds sufficient in amount to fund that month's requisition by the Contractor pursuant to the Construction Agreement. If, on the other hand, the Current Year Security is in the form of cash deposited into the Escrow, then OSPE shall be entitled each month, upon Company approval of the tendered requisition from the Contractor, to have the escrow agent withdraw from the Escrow an amount equal to the approved requisition and deliver these funds to OSPE, which OSPE shall receive in trust and deposit with the Company, and the Company shall pay the approved requisition. Notwithstanding the above, the aggregate of all withdrawals from the Escrow during the year for this purpose shall not exceed one hundred percent (100%) of the Annual Budget Requirement which served as the basis for the amount of the Escrow. At such time as OSPE posts a replacement Letter of Credit which does not renew the existing Letter of Credit, or funds an Escrow, for the next Current Year Security, the old Letter of Credit or Escrow shall be returned to OSPE. In the event of a Contribution Default, BAC on behalf of the Company, shall be entitled to draw down the Letter of Credit or Escrow, as set forth in Section 4.1(f) below. Any Current Year Security (that is, Letter of Credit or Escrow) posted pursuant to this Section

4.1(e)(i)(B) with respect to the year in which the Middle Period ended shall remain posted until such time as the Security under Section 4.1(e)(i)(C) of this Agreement has been posted.

(C) Remaining Period. Upon the date that is 30 days prior to the commencement of the Remaining Period, the Parties shall determine, working in unison with the Developer and the Contractor, the projected costs to fully complete the Infrastructure (the "Costs-to-Complete"). Within thirty (30) calendar days of such determination, OSPE shall post either a Letter of Credit or an Escrow in an amount equal to two hundred percent (200%) of the Costs-to-Complete; provided that security from the Middle Period shall not be terminated or returned to OSPE until the Remaining Period security is in place. OSPE shall be entitled each month, upon Company approval of the tendered requisition from the Contractor, to (i) have the Company draw down the Letter of Credit an amount equal to the approved requisition to pay the approved requisition; or (ii) have the escrow agent withdraw from the Escrow an amount equal to the approved requisition and deliver these funds to OSPE, which OSPE shall receive in trust and deposit with the Company, and the Company shall pay the approved requisition (as the case may be). When the Construction has been completed and accepted by the Company pursuant to the Construction Agreement, the balance of the current Escrow, which shall be drawn down by OSPE, or the original copy of the current Letter of Credit marked "CANCELLED", shall be returned to OSPE pursuant to Section 4.1(f)(i).

(ii) Additional Security.

(A) Year One. No "Additional Security" under this Section 4.1(e)(ii) shall be required with respect to construction activities projected to occur in Year One.

(B) Middle Period. On or before December 1, 2002, OSPE shall post with the Company as "Additional Security," either (i) a surety bond (the "Surety Bond") in form similar to the one attached hereto as Exhibit T and from a surety reasonably acceptable to BAC (the "Surety Bond") covering payment and performance by Contractor of the scope of work projected to occur in 2003, and in connection therewith, such surety company shall not be entitled to any payment or reimbursement by the Company as project owner under the Construction Agreement; or (ii) a Letter of Credit or Escrow, in an amount equal to one hundred fifty (150%) percent of such projected Annual Budget Requirement for 2003. The Parties acknowledge that the form of Surety Bond attached hereto as Exhibit T meets the requirements set forth in this Agreement. On December 1st of each succeeding year within the Middle Period, OSPE shall similarly post either (i) a Surety Bond covering payment and performance by Contractor of the scope of work projected to occur in the following calendar year, and in connection therewith, such surety company shall not be entitled to any payment or reimbursement by the Company as project owner under the Construction Agreement; or (ii) a Letter of Credit or Escrow, in an amount equal to one hundred fifty (150%) percent of the projected Annual Budget Requirement for the following calendar year. The Parties agree that although Section 4.1(b) limits the Capital Contributions of OSPE with regard to funding the construction of the Infrastructure to the Budget (in light of the guaranteed maximum price Construction Agreement), no such limit shall apply with respect to the amount of the Additional Security required to be posted during the Middle Period under this Section 4.1(e)(ii)(B) if the Construction has not been completed. OSPE shall have no right to draw on the Additional Security to fund its Capital Contributions. The rights of BAC on behalf of the Company to draw

on the Additional Security are the same as those set forth in Section 4.1 (e)(i)(A). At such time as a year's portion of the Infrastructure has been fully completed and has been accepted by the Company pursuant to the Construction Agreement, the balance of the current Escrow, which shall be drawn down by OSPE, or the original copy of the current Letter of Credit marked "CANCELLED" (unless renewed), shall be returned to OSPE pursuant to Section 4.1(e)(i)(B) above.

(C) Remaining Period. No Additional Security under this Section 4.1(e)(ii) shall be required with respect to Construction activities in the Remaining Period. Upon deposit of the Current Year Security under Section 4.1(e)(i)(C) for the Remaining Period above, the then-existing Additional Security previously posted with respect to such Current Year shall be returned to OSPE.

(f) Draws on Security.

(i) Draws in the Ordinary Course. The Letter of Credit and/or Escrow documents shall state, consistent with this Agreement, the procedures and logistics of draws therefrom. So long as there is no Contribution Default or Security Default, BAC shall not be entitled, on behalf of the Company, to draw down the Security, unless to repay a Cure Loan made by BAC to cure an impending adverse security/lease enforcement action by a creditor on or lessor of equipment (that is not part of the Infrastructure) in the Service Office or in the Remote Equipment Building (if OPENBAND elects to build a Remote Equipment Building), in the exercise of the Company's cure rights contemplated in Section 6.2 of the Services Agreement. The only draws permitted by OSPE are to fund Capital Contributions if it posted an Escrow and not a Letter of Credit to satisfy its Current Year Security obligation under Section 4.1(e)(i) above, subject to the limits on draws set forth therein. If, for a particular year, all required construction and related work has been satisfactorily completed and accepted by the Company in accordance with the Construction Agreement, and all Construction requisitions fully funded for that year's scope of work ("Annual Completion"), then the balance of such current Additional Security Escrow which shall be drawn down by OSPE, or the original copy of the such current Additional Security Letter of Credit marked "CANCELLED" (unless renewed), shall be returned to OSPE pursuant to the following procedure. Under the Construction Agreement, the Contractor must submit to the Company a written notice certifying that Annual Completion has occurred ("Annual Completion Certification") at least fifteen (15) calendar days prior to any draw by OPSE of the Additional Security Escrow or cancellation of the Additional Security Letter of Credit. OSPE shall certify to the Company and BAC that it has fully contributed all funds necessary to fund the construction of the Infrastructure to date (the "OSPE Certification"). The Company and BAC shall have the right to review and approve the Annual Completion Certification and OSPE Certification within fifteen (15) business days of receipt, such approval not to be unreasonably withheld. The Company's or BAC's failure to object in writing within such fifteen (15) business days shall be deemed approval. If the Company or BAC disapproves or disputes such Annual Completion Certification, then the Parties shall submit such dispute to EDR pursuant to Section 14.2 hereof, and the Additional Security shall remain posted pending a Final Determination.

(ii) Draws Outside the Ordinary Course.

(A) Default in Posting Security. OSPE shall be responsible for the timely renewal of its obligations to provide Current Year Security and Additional Security under this Section ("Security Obligations"), and failure to timely comply with these Security Obligations shall be deemed a Security Default ("Security Default"). Without limiting or altering the above obligations, if OSPE receives written notice of a Security Default, including but not limited to the failure of timely posting of its Security Obligations ("Security Default Notice"), OSPE shall have forty-five (45) calendar days from such Security Default Notice to cure such Security Default ("Security Default Cure Period"). The Security Default Cure Period shall be the exclusive cure period applicable to a Security Default. The procedures set forth in Sections 7.3 and 14.1 of this Agreement shall not apply to a Security Default; provided, however, that OSPE may assert within the time frame provided pursuant to Section 7.2(b) any good faith dispute it may have regarding the Security Default Notice in an EDR Dispute. The pendency of such EDR Dispute shall not affect or delay the right of BAC, on behalf of the Company, to (i) draw down the Letter of Credit, if the Security Default is not cured during the Security Default Cure Period or (ii) file and prosecute a claim or claims against OSPE's Surety Bond(s), if there has been a default under the Construction Agreement, unless and until a Final Determination is issued in EDR expressly suspending such rights; BAC shall not be entitled to seek any Security Default Additional Remedy, other than the Security Default Additional Remedies described in (i) and (ii) in this sentence, prior to a Final Determination of any EDR proceeding timely commenced. If, however, a Final Determination is issued finding that the draw of the Letter of Credit or Escrow (as the case may be) was improper, BAC shall return the amount of such security in dispute within ten (10) business days from such Final Determination unless the EDR Arbitrator decides otherwise. Notwithstanding anything to the contrary in this Agreement, including without limitation, the Security Default Notice provisions of this subsection, if a Letter of Credit is not timely renewed at least thirty (30) calendar days prior to its expiration date, then, regardless of whether OSPE has exercised its rights to EDR and/or whether there is time remaining in a cure period, BAC shall be entitled, on behalf of the Company, to draw down the Letter of Credit in the full amount permitted under this Section 4.1(e) and contribute the proceeds to the Escrow. BAC shall provide a Security Default Notice to OSPE before it may commence withdrawing funds from the Escrow or otherwise exercising its default rights, but such notice shall not be a prerequisite to a draw down of the Letter of Credit if OSPE did not timely renew such Letter of Credit at least thirty (30) calendar days before such Letter of Credit's expiration date or within a ten (10) calendar day grace (but not notice or cure) period. If OSPE does not cure such Security Default within the Security Default Cure Period and subject to Section 14.2 of this Agreement or if there has been a default under the Construction Agreement (without limiting BAC's rights to draw down the Letter of Credit or to file and prosecute a claim or claims against OSPE's Surety Bond(s) if the Security Default is not cured during the Contribution Default Cure Period), then, without prejudice to any other rights or claims BAC may have, (i) BAC, on behalf of the Company, shall have the right to draw down the entire amount of the existing Letter of Credit and place the proceeds into Escrow to be applied as set forth in Section 4.1(f)(ii)(C), (ii) OSPE's representatives on the Executive Committee shall have their voting rights suspended, (iii) OSPE's membership vote regarding Company matters shall be suspended, (iv) the Administrator may be removed, (v) BAC, on behalf of the Company, shall have the right to file and prosecute a claim or claims against OSPE's Surety Bond(s) ("Additional Bond Claim") for any default under the Construction Agreement (from Contractor and/or any replacement Contractor) (collectively, the "Security Default Additional Remedies"). If a Security Default occurs and remains uncured after the

Security Default Cure Period, and unless there is a Final Determination of the EDR Dispute to the contrary, then, without prejudice to the Security Default Additional Remedies, such Security Default shall constitute a Terminable Event pursuant to Section 7.2 of this Agreement.

(B) [Intentionally left blank].

(C) Use of Proceeds of Security. If the Security is drawn down from time to time under the terms of this Section 4.1 (collectively, "Draw"), the Company (by and through BAC) will only utilize the proceeds of such Draw solely to fund the costs to complete construction of the remaining Infrastructure using normal business practices. Such Draw and claims do not relieve OSPE of its Capital Contribution obligations under Section 4.1(b) of this Agreement (but each such Draw shall be credited when made). If the proceeds from the Draw are insufficient to fund all such completion costs, the Company and BAC reserve all of their rights, claims and remedies, including without limitation those against OSPE under this Agreement and/or against Contractor under the Construction Agreement. Such completion costs shall include the interest charges called for in Section 14.19 of this Agreement to the extent applicable below. In addition, if BAC has taken over construction management of the Infrastructure (whether with Contractor or a replacement contractor) such costs shall include an administrative charge equal to fifteen percent (15%) of the construction costs invoiced for completing the remaining construction to be performed under the Construction Agreement. If the proceeds from the Draw exceed the completion costs, computed after full completion and acceptance by the Company of the Infrastructure as a whole, then after completion of construction of the Infrastructure, acceptance thereof, and appropriate accounting, any such excess amounts will be returned to OSPE (and not be credited as a Capital Contribution).

(iii) Letter of Credit Or Escrow Draw Down Notice. Prior to exercising its rights set forth herein to draw down the Letter of Credit or Escrow, the drawing party shall provide five (5) business days prior written notice to the other party, *via* courier or overnight delivery service to the addresses set forth in Section 14.15 hereof, of its intent to make such a draw (the "Five Day Notice"). The Five Day Notice shall state the basis for the intended draw of the Letter of Credit or Escrow, including at a minimum a statement of the amount in dispute, and the contract provision, and the facts and circumstances, upon which the drawing party relies in making such draw. The drawing party will attach to the Five Day Notice reasonable documentation supporting the information set forth above.

(iv) Interest Rate Adjustment. Notwithstanding anything to the contrary contained herein, if either Party disputes a draw down of the Letter of Credit or Escrow by the other Party and submits such dispute to EDR pursuant to Section 14.2 hereof, and a Final Determination of such EDR Arbitrator concludes either that (1) the Party that drew down the Letter of Credit acted in bad faith (*i.e.*, not in good faith) when drawing down such Letter of Credit or Escrow, or (2) the Party that initiated the EDR proceeding acted in bad faith in bringing such proceeding, then the Party determined to be acting in bad faith shall pay to the other Party interest in an amount equal to three (3) times the total interest payment calculated pursuant to Section 14.19 hereof accrued from either (i) the date the disputed Letter of Credit or Escrow draw down occurred and legal expenses were advanced, in the event of a bad faith draw, or (ii) the date the legal fees were advanced, in the event a bad faith EDR was commenced, to the date such payment is made.

(g) Security Obligation Adjustments. OSPE's obligations for the posting and maintenance of the Security may be adjusted only in the following circumstances. If, at any time during the Middle Period, (i) the Developer notifies in writing its Lender that the pace of development for the balance of such calendar year will result in total development pace for such year being no greater than one-half of that contemplated in the approved Annual Budget Requirement, or (ii) the acquisition take down schedule between the Developer and any Builder ("Take Down Schedule") is amended to reflect a reduction in the pace of acquisition and construction by such Builder such that the pace of Home construction throughout the Development for the balance of such calendar year will result in a total Home construction pace for such year being no greater than one-half of that contemplated in the approved Annual Budget Requirement, then, in either such event, BAC shall provide written notice within fourteen (14) days to OSPE, and the Parties shall within thirty (30) days equitably reduce and return the Security to OSPE, which shall correspondingly reduce the projected Capital Contributions from OSPE for the balance of such year. Additionally, pursuant to Section 5.1(a) of the Construction Agreement on December 1st of each year, commencing 2001, Developer will provide a forecast of the following twelve (12) months of anticipated construction and absorption within the Development which shall be the same forecast provided to Lender, and the Parties agree to negotiate in good faith regarding any modification of the Annual Budget Requirement as a result of the forecast to Lender.

(h) Interest on Security. Any and all interest paid on the Liquid Security and/or Additional Security is the property of OSPE and shall be eligible to be drawn down by OSPE immediately upon OSPE's request.

(i) Failure to Agree to Annual Budget. Notwithstanding anything contained herein to the contrary, in the event that the Parties do not agree to the Annual Budget pursuant to Section 5.1 of the Construction Agreement by November 1st, then (i) OSPE shall post Security required under this Section 4.1 in an amount equal to the Security for the previous calendar year and (ii) within thirty (30) calendar days of a final determination of the Annual Budget, OSPE shall adjust the Security once the Annual Budget is established. Either Party may initiate EDR if the Annual Budget has not been determined by December 1st.

4.2 Additional Capital Contributions . The Budget contemplates a reasonable level of change or alteration in the plans of the Development as such plans are implemented and the Homes are built. Except as otherwise provided in this Section 4.2, OSPE shall make additional Capital Contributions only if (i) Contractor has the right to requisition funds under the Construction Agreement; (ii) OSPE consents to same; (iii) a majority of the Members entitled to vote agreed to an Upgrade pursuant to Section 2.13 of the Services Agreement; or (iv) a majority of the Members entitled to vote agreed to provide a Supplemental Service pursuant to Section 2.1(c) of the Services Agreement and OpenBand consented to provide such Supplemental Service pursuant to Section 2.1(c) of the Services Agreement. OSPE shall contribute the additional Capital Contributions in a timely manner to pay all requisitions submitted by Contractor and approved by the Executive Committee to effectuate the purposes of the above. In addition, OSPE shall make additional Capital Contributions to fund payment of the Minimum Guaranteed Payments to BAC under Section 5.2(g) to the extent that the Company has

insufficient funds to make such payments. BAC shall have no obligation to contribute Additional Capital, except as otherwise expressly provided herein.

4.3 No Interest Upon Contributions . No Member shall be entitled to interest on its Capital Contributions, whether or not such contribution was made in cash, property or other rights or assets.

4.4 No Return of Capital Contributions . No Member shall be entitled to (a) withdraw any part of its Capital Contribution or Capital Account, or (b) receive any distribution from its Capital Account, except as specifically provided in this Agreement. Except as otherwise provided in this Agreement or another written agreement between the Parties, there shall be no obligation on behalf of the Company to return to any Member or withdrawn Member any part of such Member's Capital Contributions to the Company for so long as the Company continues in existence.

4.5 Loans from Members . Any Member may, only with the unanimous written consent of the Members entitled to vote, loan funds to the Company to the extent required for bona fide business purposes and on such rates, terms and conditions as are unanimously approved by the Members (including but not limited to whether such loan shall be repaid pursuant to Sections 5.4, 5.5 and 7.9). Notwithstanding the foregoing, if (a) OSPE is in default with respect to funding its Capital Contributions pursuant to Section 4.1 of this Agreement and/or (b) an event of Termination set forth in Section 8.2(a) of the Construction Agreement has occurred, or (c) BAC is aware that OpenBand has received a default notice regarding financing of any of the Service Office or the Remote Equipment Building (if built, at OpenBand's election) equipment, then BAC may, in its sole discretion and without prejudice to any other rights, claims or remedies it may have, loan money to the Company, without OSPE's consent, to fund such construction requisitions, pursue the construction of the Infrastructure or to cure such financing default (collectively a "Cure Loan"). Loans by any Member to the Company (i) shall be evidenced by a note, (ii) shall not be considered contributions to the capital of the Company, and (iii) shall not increase the Capital Account of the lending Member. Cure Loans made by Members to the Company shall bear interest at the Default Rate (as defined in Section 14.19) and shall be governed by commercially reasonable terms and conditions ("Permissible Interest Rate"). Any BAC-appointed member of the Executive Committee has the power to sign on behalf of the Company, as maker, a promissory note evidencing the Company's obligation to repay the Cure Loan. Repayment of Member loans shall not be deemed withdrawals from the capital of the Company. Any such loans shall be repaid solely out of assets of the Company (but shall not relieve OSPE and Guarantor of any other obligations it may have relating to the facts which gave rise to a Cure Loan). No Member shall have any personal liability for any portion of any loan by a Member to the Company.

4.6 Limited Liability . Except as provided in this Agreement, no Member shall be required to contribute or lend any money or property to the Company.

4.7 Not for Benefit of Creditors . The provisions of this Section are not intended to be for the benefit of any creditor or other person (other than a Member) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members, and no such creditor or other person shall obtain any right under any such

provisions or shall by reason of any such provisions make any claim with respect to any debt, liability, obligation or claim against the Company or any of the Members.

4.8 Service Office. It is acknowledged that (i) the funds necessary to build the Service Office shall be provided independently of this Agreement and shall not be part of nor funded by OSPE's Capital Contribution, (ii) in the event that any Cure Loan is made to cure a financing default pursuant to Section 4.5 of this Agreement, neither the Company nor BAC, subject to the Company's or BAC's subrogation rights, shall acquire any ownership interest in the Service Office, and (iii) OSPE intends to use the Service Office to provide Services to the Development, but the Service Office is not a necessary component to actually provide Services to the Development at any time, including without limitation, after Termination of the Operating Agreement, Services Agreement or Construction Agreement or after commitment of a Level Two Condition of the Services Agreement or if a third party provider begins to provide Services to the Development. Notwithstanding anything contained herein to the contrary, OpenBand shall have the right to build the Service Office at, or move the Service Office to, an alternate site selected by OpenBand (and not on the Development) so long as the Customers are not affected thereby; in such event, BAC's Guaranteed Payment shall be modified as described in Section 5.1(a)(iii). In the event that the Service Office is located outside of the Development, the Parties shall meet and confer to negotiate any modification to the Three Agreements and any applicable Ancillary Agreements, consistent with any applicable express terms of the Three Agreements and Ancillary Agreements, necessary to preserve and effectuate the intent of the Three Agreements. If the Parties have not agreed to necessary modifications within one hundred twenty (120) days of OpenBand giving written notice that it has elected to locate the Service Office outside the Development, then the Parties shall submit the dispute to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement.

SECTION V DISTRIBUTIONS TO MEMBERS

5.1 Guaranteed Payments and Distributions to Members . Except as otherwise provided in this Agreement with respect to distributions to be made upon the dissolution and liquidation of the Company, guaranteed payments (to BAC) and distributions (to OSPE) shall be made by the Company as follows:

(a) BAC shall be paid as "Guaranteed Payments":

- (i) eight percent (8%) of the collected Revenue for any Services provided to Customers within the Development,
- (ii) twelve percent (12%) of the collected Revenue for Supplemental Services provided to Customers within the Development,
- (iii) an amount equal to the Opportunity Fee pursuant to Section 4.8(b) of the Services Agreement,
- (iv) all amounts owing pursuant to Section 7.8(a) of this Agreement as a consequence of a "Level Two Condition", and

(v) fifty percent (50%) of the collected Revenue from any third party providers pursuant to Section 2.1(c) of the Services Agreement (the foregoing payments collectively, "Guaranteed Payments").

All of the foregoing payments to BAC are to be treated as "Guaranteed Payments" pursuant to Code Section 707(c).

(b) Subject to Section 3.4, all of the remaining collected Revenues, net of Expenses and the Financial Reserve, shall be distributed to OSPE.

(c) Except as otherwise provided in this Agreement, cash payments and distributions shall be made by the Company to BAC and OSPE, respectively, on a monthly basis. No distribution shall be paid to OSPE unless BAC shall have been paid its Guaranteed Payment applicable to the same time period of Revenue, except where BAC's Guaranteed Payment is deferred pursuant to Section 5.2 of this Agreement (in which case no distribution shall be paid to OSPE unless BAC shall have been paid any Minimum Guaranteed Payment due under Section 5.2(g)) or the Guaranteed Payment is extinguished or limited in this Agreement.

(d) Homeowner's Association Payment. BAC guarantees the timely payment by the HOA of any and all HOA payment obligations to the Company under the HOA Agreement so long as BAC or its Affiliates control the HOA (as such control is defined under the HOA Governing Documents (as defined in Section 12.1(d) below, subject to the Property Owners Act of Virginia), except to the extent such payment obligations are reduced, prohibited or precluded by regulatory or court decision or otherwise by applicable law.

5.2 Deferral of Guaranteed Payments and Distributions.

(a) Up to 333 Homes. Subject to Section 5.2(g), until three hundred thirty-three (333) Homes in the Development are completed and occupied, the Guaranteed Payment specified in Section 5.1 owed to BAC shall be deferred and retained by the Company in accordance with this Section.

(b) At Least 334 Homes and Less Than 666 Homes. Subject to Section 5.2(g), during the period in which at least three hundred and thirty-four (334) Homes but less than six hundred sixty-six (666) Homes are completed and occupied, fifty percent (50%) of the Guaranteed Payment specified in Section 5.1 owed to BAC shall be paid currently and fifty percent (50%) of the Guaranteed Payment shall be deferred and retained by the Company in accordance with this Section.

(c) At Least 667 Homes. After six hundred sixty-seven (667) Homes in the Development are completed and occupied, BAC shall be paid its Guaranteed Payment as specified in Section 5.1 on a current basis, without any deferral.

(d) Payment of the Deferred Guaranteed Payment. Within one (1) year after the completion and occupancy of six hundred sixty-seven (667) Homes in the Development, the

Company shall deliver to BAC the full amount of the Guaranteed Payment specified in Section 5.1 which had been deferred and accrued pursuant to Section 5.2(a) and (b) above.

(e) OSPE Distributions. No deferral provisions apply to OSPE distributions specified in Section 5.1, to the extent such distributions are otherwise permitted under this Agreement.

(f) Deferred Guaranteed Payments and Distributions. Funds representing all deferred Guaranteed Payments and distributions under this Section shall be applied by the Company only to payments due Contractor under the Construction Agreement and shall not constitute Capital Contributions. Additionally, notwithstanding anything contained herein to the contrary, to the extent that such deferred Guaranteed Payments and distributions are used to pay sums due Contractor under the Construction Agreement, OSPE shall not be required to make a Capital Contribution pursuant to Section 4.1(b) of this Agreement in such amount.

(g) Limitations on Deferral of Guaranteed Payments.

(i) Notwithstanding anything to the contrary contained in this Agreement, for each taxable year of the Company in which payment of all or any portion of the Guaranteed Payment to BAC would be deferred under Section 5.2(a) or (b), the Company shall pay to BAC (in addition to the portion of the Guaranteed Payment during the period described in Section 5.2(b) that is not deferrable pursuant to that Section) a minimum Guaranteed Payment (the "Minimum Guaranteed Payment") in an amount equal to the sum of:

(1) the product of (x) the amount that would, but for this Section 5.2(g), be deferred pursuant to Section 5.2(a) and that is reflected on a Schedule K-1 issued by the Company to BAC or otherwise includable in the income to be reported by BAC for federal income tax purposes for such taxable year and (y) forty percent (40%); and

(2) the product of (x) the amount that would, but for this Section 5.2(g), be deferred pursuant to Section 5.2(b) and that is reflected on a Schedule K-1 issued by the Company to BAC or otherwise includable in the income to be reported by BAC for federal income tax purposes for such taxable year and (y) forty percent (40%).

For purposes of this Section 5.2(g), any Guaranteed Payments placed in escrow pursuant to Section 5.7 shall be treated as paid to BAC during such taxable year.

(ii) The Minimum Guaranteed Payment for a taxable year shall be paid to BAC in quarterly installments on April 1, June 1, September 1, and December 31 of such taxable year, with the final payment on December 31 subject to year-end adjustment.

(iii) Except as otherwise specifically provided in this Section 5.2(g)(iii), the Members hereby agree that any Guaranteed Payment that is deferred pursuant to Section 5.2(a) or 5.2(b) will be reported for federal income tax purposes as taxable income of BAC and reflected as such on the Schedule K-1 issued by the Company to BAC for such taxable year, even though such amount is not paid in cash to BAC during such taxable year. Notwithstanding the foregoing, the Administrator may determine in any taxable year, after

receipt of written advice from the Company's accountants or other tax advisors, to not include all or any portion of a Guaranteed Payment that is deferred pursuant to Section 5.2(a) or 5.2(b) in the amount that is reported for federal income tax purposes as taxable income of BAC.

(iv) If, pursuant to the last sentence of Section 5.2(g)(iii) above, the Company does not include all or any portion of a Guaranteed Payment deferred pursuant to Section 5.2(a) or 5.2(b) in the amount that is reported for federal income tax purposes as taxable income of BAC for a taxable year, and it is thereafter determined, whether by reason of an examination by any taxing authority of any tax return of BAC, of Persons holding a beneficial interest in BAC, or otherwise, that all or any portion of a Guaranteed Payment that was deferred pursuant to Section 5.2(a) or (b) should have been included in the amount reported as taxable income of BAC for such taxable year, and thus should have been (but was not) previously taken into account in calculating and making a Minimum Guaranteed Payment pursuant to Section 5.2(g)(i) (a "Non-Included Deferred Guaranteed Payment"), the Company shall pay to BAC as a Minimum Guaranteed Payment the excess of:

(1) the Minimum Guaranteed Payment determined pursuant to Section 5.2(g)(i) by taking the Non-Included Deferred Guaranteed Payment into account, over

(2) the portion, if any, of the Non-Included Guaranteed Payment that shall have theretofore been paid by the Company to BAC pursuant to Section 5.2(d).

In addition, the Company (and, with respect to each taxable year of the Company for which the Administrator making the decision under the last sentence of Section 5.2(g)(iii) is William Dean or a representative selected from the OSPE List, OSPE and the Company jointly and severally) shall indemnify and hold BAC and each Person holding a beneficial interest in BAC harmless, on an After-Tax Basis, against all interest and penalties resulting from the inclusion of any Non-Included Deferred Guaranteed Payment in its taxable income. "After-Tax Basis" means with respect to any payment to be made, that such payment will be grossed-up by the payor to make the payee whole for the net amount of additional taxes of any nature whatsoever payable as a result of the receipt or accrual of such payment and such grossed-up amount (taking into account all available credits or deductions attributable to the payment or accrual of such additional taxes); for this purpose, it shall be assumed that the recipient is subject to income taxation at a 40% rate.

(v) Any Minimum Guaranteed Payments paid to BAC pursuant to this Section 5.2(g) shall be treated as payments of the Guaranteed Payments otherwise payable to BAC under this Agreement, and they shall be offset against any subsequent Guaranteed Payments that, but for this Section 5.2(g), would have been paid to BAC under this Agreement (however, no amount payable by the Company to BAC pursuant to clause (iv) of this Section 5.2(g) to indemnify BAC in respect of interest or penalties shall be so treated).

5.3 Suspension of OSPE's Distribution. If OpenBand fails to deliver the Service Fee Statement (as this term is defined in Section 4.8(c) of the Services Agreement), as required pursuant to the terms of the Services Agreement, all monies collected as Revenues shall be retained by the Company, no Service Fee (as this term is defined in Section 4.8(a) of the Services

Agreement) payments shall be made to OpenBand and no distributions shall be made to OSPE, until all such Service Fee Statements are submitted and are up to date.

5.4 Distribution Upon Dissolution Resulting From Default . Except as provided in Section 5.5 of this Agreement, if the Company dissolves, then the assets of the Company shall be distributed in the following order of priority, subject to the rights and obligations conferred upon BAC in Section 7.9 of this Agreement.

(a) If OSPE is in default under this Agreement and such default results in Termination of the Company pursuant to Section 7.2 of this Agreement:

(i) First, to the Company's creditors in accordance with Section 13.1-1049 of the Virginia Code.

(ii) Second, to BAC for its Cure Loans and other loans to the Company pursuant to Section 4.5, to the extent such amounts are outstanding.

(iii) Third, to OSPE for its loans to the Company pursuant to Section 4.5, to the extent such amounts are outstanding.

(iv) Fourth, to OSPE an amount as calculated pursuant to Section 7.9(a) of this Agreement plus eight percent (8%) of any Exclusivity Challenge Payments (to the extent not previously deducted in computing Revenue).

(v) Fifth, the remaining amount to BAC.

(b) If BAC is in default under this Agreement and such default results in Termination of the Company pursuant to Section 7.2 of this Agreement:

(i) First, to the Company's creditors in accordance with Section 13.1-1049 of the Virginia Code.

(ii) Second, to OSPE for its loans to the Company pursuant to Section 4.5, to the extent such amounts are outstanding.

(iii) Third, to BAC for its Cure Loans and other loans to the Company pursuant to Section 4.5, to the extent such amounts are outstanding.

(iv) Fourth, the remaining amount to OSPE.

5.5 Distribution Upon General Dissolution or Sale . Upon expiration of the Term or if the Members agree to (i) sell the assets of the Company (the "Sale") to a third party, or (ii) dissolve the Company other than under Sections 5.4(a) and 5.4(b), then the proceeds from the Sale or dissolution shall be distributed as follows:

(a) First, to the Company's creditors in accordance with Section 13.1-1049 of the Virginia Code.

(b) Second, to BAC for its Cure Loans pursuant to the Section 4.5, to the extent such amounts are outstanding.

(c) Third, to OSPE an amount equal to the sum of one hundred fifty percent (150%) of the Unamortized Cost, plus eight percent (8%) of any Exclusivity Challenges Payments (to the extent not previously deducted in computing Revenue.) .

(d) Fourth, to the Members, pro rata, to repay any outstanding and properly approved and documented loans made pursuant to Section 4.5 (excluding Cure Loans) until each Member has been repaid in full the outstanding balance and accrual interest of any loan to the Company, if any.

(e) Fifth, seventy-five percent (75%) of the remaining amount to OSPE and twenty-five percent (25%) of the remaining amount to BAC.

5.6 Unamortized Cost . For the purposes of this Agreement, Unamortized Cost shall mean the remaining cost to the Company of the Infrastructure (based upon paid Contractor requisitions) calculated by using the applicable straight-line depreciation term set forth below. The Unamortized Cost for the Infrastructure initially installed in the Development will be based on one-year construction phases and a partial year for 2001 based upon calendar years and commencing from the Effective Date of this Agreement. The cost of each one-year construction phase will be consistent with the Budget and based on the fixed construction price agreed to pursuant to Section 5.1 of the Construction Agreement. The initial Infrastructure for the entire Development shall be deemed to have a ten (10) year amortization schedule. The ten (10) year straight-line depreciation of each phase will begin January 1, 2002. All upgrades to the Infrastructure shall be deemed to have the amortization schedule agreed to pursuant to the Company's approval of such upgrade pursuant to Section 2.13(d) of the Services Agreement. Notwithstanding anything contained herein to the contrary, the Unamortized Cost with respect to the initial Infrastructure for the entire Development shall not exceed the amount of the Budget (as may be modified by the Parties only pursuant to this Agreement). The Unamortized Cost with respect to any upgrade shall be net of the consideration received by the Company as a result of sale of a portion of the Infrastructure being replaced or upgraded. Within thirty (30) calendar days of completion of each year's build-out of the Infrastructure, the Parties shall execute an estoppel certificate, in form substantially similar to the one attached hereto as Exhibit X, certifying the work completed during the preceding year, the costs requisitioned in association therewith and the Capital Contribution made to pay such requisitions. The Unamortized Cost of any approved upgrades shall be calculated in accordance with the amortization schedule determined as part of the approval process for such upgrade as set forth in Section 2.13 of the Services Agreement. Disputes over determination or certification of costs or issuance of the estoppel certificate shall be resolved pursuant to the Expedited Dispute Resolution Procedure set forth in Section 14.2 below.

5.7 Consequences of Non-Payment . If BAC, Developer, or their Affiliates have not delivered, all payments owed to OSPE or Contractor ("Owed Party"), pursuant to the terms

(including without limitation the applicable cure period under the respective agreement) of this Agreement, the Services Agreement or the Construction Agreement, respectively, then the Company shall, without prejudice to any other rights and remedies available, be entitled to reserve and deposit into a noncomingled escrow account an amount equal to BAC's Guaranteed Payment to the extent of the amounts unpaid until either such outstanding amount has been delivered by BAC, Developer, or their Affiliates or if the payments asserted by OSPE or Contractor to be owing were in dispute, until resolution of the dispute. If OSPE, OpenBand or Contractor has not delivered all payments owed to the Company pursuant to the terms (including without limitation the applicable cure period under the respective agreement) of this Agreement (as asserted by the BAC-appointed Members of the Executive Committee), the Services Agreement or the Construction Agreement, respectively, then the Company, without prejudice to any other rights and remedies available, shall reserve a portion of OSPE's distribution (pursuant to Section 5.1(b) not to exceed the amount outstanding and unpaid, and deposit same into a noncomingled escrow account until either such outstanding amount has been delivered to the Company or if the payments asserted by the Company (acting through BAC's appointed members of the Executive Committee) to be owing were in dispute, until resolution of the dispute; notwithstanding anything contained herein to the contrary, the Company shall not have the right to reserve (under this Section 5.7) any or all of the Service Fee due to OpenBand pursuant to the Services Agreement.

5.8 Monetary Defaults.

(a) Payment Interim Review. BAC shall have the option, at its expense, to perform interim audits in order to determine the accuracy of the Guaranteed Payment made to BAC under the terms of this Agreement. If upon such audit it is determined that the amount of the Guaranteed Payment is inaccurate, the Company shall make a payment to BAC (or reduce the Guaranteed Payment for the following month) in order to correct the inaccuracy.

(b) Payment Annual Review. Annually on or before March 31st, the Company will obtain from its outside independent certified public accountants audited financial statements for the previous calendar year ("Company Audit"). If the Company Audit reveals that BAC has received Guaranteed Payments less than the full amount due to it during the previous year, the Company, within thirty (30) days of receipt of the Company Audit shall make a year-end payment to BAC of (i) all remaining unpaid amounts due to BAC for the prior year, and (ii) an interest charge at an annual rate equal to the prime rate (as stated in the Wall Street Journal measured on the date thirty (30) calendar days preceding the date that such payment is delivered), plus five percent (5%), or the maximum rate allowed by law, whichever is less, calculated from when such payment was initially due if computed correctly until paid. If Company Audits show that for two (2) consecutive years the Company's deposits and payments to BAC (excluding payments made pursuant to the previous calendar year's year-end audit) over the course of any particular year are less than eighty percent (80%) of the amount shown by the Company Audit as actually due to BAC (a "Deposit/Payment Error"), then such Deposit/Payment Error shall be deemed a Terminable Event under Section 7.2 of this Agreement. OSPE shall have the right to conduct an interim audit prior to December 31st of any calendar year and adjust any Guaranteed Payments to BAC for that calendar year prior to December 31st based on such interim audit. If OSPE so adjusts the Guaranteed Payment to BAC

prior to December 31st then such adjustment shall not be counted against OSPE when determining whether OSPE committed a Deposit/Payment Error pursuant to this Section.

(c) BAC shall be entitled to conduct an audit to verify the Company Audit ("Verification Audit"). BAC shall pay the costs of the Verification Audit unless the Verification Audit finds that the Company has underreported the amount due in the applicable year by an amount equal to or greater than five percent (5%) of the total amount shown to be due by the Verification Audit. In such event, the Company shall pay the costs of such audit. The Company has the right to dispute the Verification Audit pursuant to the Dispute Resolution procedures set forth in this Agreement. If upon such Company Audit and/or Verification Audit it is determined that the amount of funds deposited into BAC's account was other than that required by this Agreement; then, written notice shall be given to BAC or the Company, as the case may be, immediately and the corrections to payments shall be made pursuant to this Section.

(d) In the event that an audit (by the Company, the Parties, BAC or anyone else) determines that there was an error in any prior year's audit or Guaranteed Payment calculation, which would (or could) have constituted or counted towards a Deposit/Payment Error if discovered during such prior year's audit, then the Company shall correct the payment error; however, notwithstanding anything contained herein to the contrary, neither such error nor its correction shall constitute or count towards a Deposit/Payment Error for purposes of calculating whether a Deposit/Payment Error has occurred for two (2) consecutive years pursuant to Section 5.8(b) above.

SECTION VI FEDERAL AND STATE TAX MATTERS

6.1 Maintenance of Members' Capital Accounts . A separate Capital Account for each Member shall be established and maintained throughout the full term of the Company in accordance with Regulation Section 1.704-1(b)(2)(iv).

6.2 Special Allocations . Allocations of items of income, gain, loss, deduction and credit for federal income tax purposes shall be allocated pursuant to this Section 6.2

(a) **Special Allocations**. The provisions of the Regulations promulgated under Code Section 704(b) relating to the qualified income offset, minimum gain chargeback with respect to nonrecourse liabilities and partner nonrecourse debt, and the allocation of nonrecourse deductions and partner nonrecourse deductions are hereby incorporated by this reference and shall be applied to the allocation of Company items of income, gain, loss or deduction in the manner provided in such Regulations. However, the Members do not intend that the "deficit restoration obligation" described in Section 1.704-1(b)(2)(ii)(c) of the Regulations, or any successor provision, be incorporated into this Agreement. For this purpose, nonrecourse deductions shall be allocated one hundred percent (100%) to OSPE.

(b) **Allocations of Profits and Income in General**. After giving effect to the Special allocations set forth above in this Section 6.2, the Company's Profits and Losses (other than Profits and Losses from Capital Transactions) and all other items of income, gain, loss and deduction shall be allocated one hundred percent (100%) to OSPE.

(c) Allocations of Profits and Losses from Capital Transactions. After giving effect to the special allocations set forth above in this Section 6.2, the Company's Profits and Losses from a Capital Transaction shall be allocated in a manner so as to cause the positive Capital Account balance of each Member (determined immediately prior to the distribution of liquidating proceeds to the Members) to equal the amount that such Member would receive if an amount equal to the aggregate Capital Account balances of the Members were distributed to the Members pursuant to Sections 5.5(c) and (e).

6.3 Tax Year and Accounting Matters. The taxable year of the Company shall be the calendar year. The Company shall adopt such methods of accounting and file its tax returns on the methods of accounting determined by the Administrator upon the advice of the certified public accounting firm servicing the books and records of the Company.

6.4 Tax Elections. The Members shall cause the Company to make an election to be taxed as a partnership. The Members, by unanimous approval, may cause the Company to subsequently make or revoke all tax elections provided for under the Code.

6.5 Tax Matters Member. OSPE shall be the "Tax Matters Member" of the Company and all Members will take such actions as may be necessary, appropriate or convenient to effect the designation of OSPE as the Tax Matters Member. The Tax Matters Member shall have the discretion to make decisions and perform any actions which under the Code may be made by a Tax Matters Member, except decisions to (i) extend the statute of limitations, or (ii) enter into a settlement agreement or compromise with a tax authority, neither of which can be made without the unanimous consent of the Members. All costs of the Tax Matters Member in connection with its duties as a Tax Matters Member, including but not limited to reasonable attorneys' fees, shall be the obligation of and shall be paid or reimbursed by the Company as an Expense.

6.6 Compliance with the Code and Regulations. In the event that the Executive Committee determines that it is prudent to modify the allocations set forth in this Section VI in order to comply with the Code and Regulations, the Executive Committee shall have the authority to change the allocations set forth above in this Section VI to the extent necessary to comply with the Code and Regulations, so long as such change does not have a material impact on the distributions or payments to be made to any Member under this Agreement.

SECTION VII TERM AND TERMINATION

7.1 Term of the Company. The Company shall continue for twenty-five (25) years from the date of this Agreement.

7.2 Events of Termination.

(a) Enumerated Events. The Company shall be dissolved and its affairs shall be wound up ("Termination") upon the occurrence of the first to occur of:

- (i) the unanimous written consent of the Members,
- (ii) the filing of a Bankruptcy Action, unless the non-bankrupt Member elects by resolution within ninety (90) days of such filing or adjudication or entry of an order to continue or to purchase the Membership Interest of the bankrupt Member as provided in Section 8.3 (and in any event subject to Section 8.6),
- (iii) the expiration of the Term pursuant to Section 7.1 of this Agreement,
- (iv) the commission of a Terminable Event (as defined in this Section 7.2(b), or
- (v) the termination of the Services Agreement pursuant to Section 5 of the Services Agreement.

(b) Terminable Event.

1. Terminable Breach other than Embezzlement. If a Party ("Terminating Party") has actual knowledge that the other party ("Terminated Party") committed a Terminable Breach (as defined in subsection 7.2(c)(i)-(iii), 7.2 (c)(v)-(ix) or 7.2(d) of this Agreement) or if the Terminated Party had delivered to each of the notice parties for the Terminating Party listed Section 14.15 of this Agreement (excluding any parties to be copied) ("Terminating Notice Parties") documentation sufficient for the Terminating Party to know of a Terminable Breach (as defined in subsection 7.2(c)(i)-(iii), 7.2(c)(v)-(ix) or 7.2(d) of this Agreement) that, if not cured, would give rise to a Terminable Breach, then Terminating Party shall have sixty (60) calendar days, from the earlier of the date the Terminating Party obtained actual knowledge or the date each of the Terminating Notice Parties received from the Terminated Party documentation sufficient to obtain actual knowledge of a Terminable Breach, to give the notice ("Terminable Breach Notice") of such Terminable Breach to the Terminated Party; failure to deliver the Terminable Breach Notice within such sixty (60) calendar day period shall constitute a waiver of the right to Terminate this Agreement for such Terminable Breach by the Terminating Party (but not other rights and remedies allowed under this Agreement). If Terminated Party in good faith disputes the Terminable Breach within fifteen (15) calendar days of receiving the Terminable Breach Notice, then the Parties shall submit such dispute to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement. If the Terminated Party fails to obtain, in such Expedited Dispute Resolution process, a Final Determination that the Terminable Breach Notice was in error and that there was no Terminable Breach, then there shall be no further cure period except as expressly established by the EDR Arbitrator; provided, however, that no further cure period shall in any event be permitted, whether by order in the EDR or otherwise, where the Terminable Breach arose pursuant to Sections 7.2(c) (ii), (iii), (vi), (vii) and (ix). If the Terminable Breach Notice is not disputed by the Terminated Party, then the Terminated Party shall have the applicable cure period to cure the Terminable Breach. If Terminated Party fails to cure the Terminable Breach within the applicable cure period or the cure period established by the EDR Arbitrator (as the case may be), then Terminating Party shall have one hundred sixty-five (165) calendar days from the later of (i) the expiration of the cure period or (ii) the resolution of an dispute over whether a Terminable Breach has occurred, if applicable, to notify Terminated Party whether the Terminating Party is electing to treat the

Terminable Breach as a terminable event ("Terminable Event"). If Terminating Party elects not to treat the Terminable Breach as a Terminable Event or fails to provide written notice of its election within such one hundred sixty-five (165) calendar day period, then Terminating Party shall be deemed to have waived its right to Terminate this Agreement for such Terminable Event pursuant to Section 7.2(a) of this Agreement (but not other rights and remedies under this Agreement).

2. **Terminable Breach of Embezzlement.** If a Party ("Terminating Party") has received written notice from the other party ("Terminated Party") stating that the Administrator appointed from the OSPE List has committed a Terminable Breach (as defined in subsection 7.2(c)(iv) of this Agreement) ("Embezzlement Notice") that, if not cured, would give rise to a Terminable Breach, then Terminating Party shall have sixty (60) calendar days from the receipt of the Embezzlement Notice, to give the Terminable Breach Notice of such Terminable Breach to the Terminated Party; failure to deliver the Terminable Breach Notice within such sixty (60) calendar day period shall constitute a waiver of the right to Terminate this Agreement for such Terminable Breach by the Terminating Party (but not other rights and remedies allowed under this Agreement). If Terminated Party in good faith disputes the Terminable Breach within fifteen (15) days of receiving the Terminable Breach Notice, then the Parties shall submit such dispute to Expedited Dispute Resolution pursuant to Section 14.2 of this Agreement. If the Terminated Party fails to obtain, in such Expedited Dispute Resolution process, a Final Determination that the Terminable Breach Notice was in error and that there was no Terminable Breach, then there shall be no further cure period except as expressly established by the EDR Arbitrator; provided, however, that no further cure period shall in any event be permitted, whether by order in the EDR or otherwise, where the Terminable Breach arose pursuant to Sections 7.2(c) (iv) and (v). If the Terminable Breach Notice is not disputed by the Terminated Party, then the Terminated Party shall have the applicable cure period to cure the Terminable Breach. If Terminated Party fails to cure the Terminable Breach within the applicable cure period or the cure period established by the EDR Arbitrator (as the case may be), then Terminating Party shall have one hundred sixty-five (165) calendar days from the later of (i) the expiration of the cure period or (ii) the resolution of a dispute over whether a Terminable Breach has occurred, if applicable, to notify Terminated Party whether the Terminating Party is electing to treat the Terminable Breach as a terminable event ("Terminable Event"). If Terminating Party elects not to treat the Terminable Breach as a Terminable Event or fails to provide written notice of its election within such one hundred sixty-five (165) calendar day period, then Terminating Party shall be deemed to have waived its right to Terminate this Agreement for such Terminable Event pursuant to Section 7.2(a) of this Agreement (but not other rights and remedies under this Agreement).

(c) Terminable Breach of OSPE. The following shall constitute a Terminable Breach by OSPE:

(i) A Deposit/Payment Error occurred for two (2) consecutive years as described in Section 5.8(b) of this Agreement.

(ii) Commitment by OpenBand of a Level Three Breach in the Services Agreement which remains uncured beyond the applicable notice and cure period (if

any); and results in termination of the Services Agreement pursuant to Section 5.4 of the Services Agreement.

(iii) Commitment by Contractor of a Breach in the Construction Agreement which remains uncured beyond the applicable notice and cure period; and results in termination of the Construction Agreement pursuant to Section 8.2 of the Construction Agreement.

(iv) Embezzlement, fraud, or breach of fiduciary duty by the Administrator, or the Administrator's acting beyond his scope of authority with respect to a material matter, and failure to cure such breach (to the extent curable) after being given notice pursuant to Section 7.3;

(v) Embezzlement or fraud by an OSPE member of the Executive Committee in performing his duties, or an OSPE member of the Executive Committee acting beyond his scope of authority with respect to a material matter, and failure to cure such breach (to the extent curable) after being given notice pursuant to Section 7.3;

(vi) Failure of OSPE to timely contribute its Capital Contribution pursuant to Section 4.1(c) of this Agreement, after being given notice pursuant to the cure period set forth in Section 4.1(c).

(vii) Failure of OSPE to timely post the Security Obligations pursuant to Section 4.1(e) of this Agreement, after being given notice pursuant to the cure period set forth in Section 4.1(f)(ii)(A).

(viii) If OSPE receives three (3) Breach Notices within any twelve (12) month period for failure to pay BAC its Guaranteed Payment pursuant to Section 5.1 of this Agreement.

(ix) Failure by the OSPE-appointed Administrator (from the OSPE List) to pay the Guaranteed Payments to BAC when due under this Agreement, and such failure remains uncured after the notice and cure period set forth in Section 7.3 of this Agreement.

(d) Terminable Breach of BAC. The following shall constitute a Terminable Breach by BAC:

(i) [Intentionally left blank.]

(ii) Granting of record the rights under Easement One to another party other than the Company such that the Company is deprived of its intended rights with respect to the exclusive nature of Easement Two, and failure to cure such breach (to the extent curable) after being given notice pursuant to Section 7.3;

(iii) Commission of an act of embezzlement or fraud against the Company;

(iv) Violation by BAC or its Affiliates of the Company opportunity rights under Section 2.3, and failure to cure such breach (to the extent curable) after being given notice pursuant to Section 7.3;

(v) Embezzlement or fraud by an BAC member of the Executive Committee in performing his duties, or a BAC member of the Executive Committee acting beyond his scope of authority with respect to a material matter, and failure to cure such breach (to the extent curable) after being given notice pursuant to Section 7.3;

(vi) Commitment by the Company of a breach in the Construction Agreement which remains uncured beyond the applicable notice and cure period and results in termination of the Construction Agreement pursuant to Section 8.2 of the Construction Agreement; or

(vii) Commitment by the Company of a breach of the Services Agreement which remains uncured beyond the applicable notice and cure period and results in termination of the Services Agreement pursuant to Section 5.5 of the Services Agreement.

(e) Consequences of BAC Declaring a Terminable Event. If there has been Termination pursuant to Section 7.2(a), then:

(i) the powers, authority, and the duties of the Administrator set forth in Section 3.3 of this Agreement shall be limited and exercised only to the extent necessary for the Administrator to perform only the following functions:

(1) to use all reasonable efforts to have Contractor meet all of its then-current obligations under the Construction Agreement, if construction of the Infrastructure is not completed;

(2) to use all reasonable efforts to have OpenBand meet all of its obligations under the Services Agreement, including but not limited to, the Performance Criteria set forth in the Services Agreement, and to have OpenBand cure any defects or deficiencies that have caused any failure to meet the Performance Criteria and otherwise mitigate the harm from such defects or deficiencies;

(3) to conduct the Company in a manner so that the provision of Services is (consistent with the duty in sub-section (2) above) maintained on a level equal to the level that was provided immediately prior to the Terminable Event; and

(4) to conduct the affairs of the Company only to the extent necessary to maintain the status quo operation of the Company in the manner it was conducted immediately prior to commission of the Terminable Event (but consistent with the duty in sub-section (2) above). In this regard, no new upgrades or expansions or additions of any Services are permitted.

(ii) The Parties acknowledge that within thirty (30) days of a Terminable Event under Section 7.2(b) of this Agreement ("Post-Termination Period") OpenBand shall provide to the Company access to the Service Office Reserve Area, the Service Office Reserve Area Equipment, access to the Remote Equipment Building Reserve Area (if OpenBand elects to build a Remote Equipment Building on the Development), access to the Reserved Fibers and access to OpenBand's facilities necessary for any Alternative Provider to provide the Services to the Development ("Post-Termination Reserve Area"). OpenBand shall within the Post-Termination Period deliver a written notice to the Company of OpenBand's satisfactory provision of the Post-Termination Reserve Area. Within twenty (20) days from the receipt of such notice the Company shall either approve or dispute the provision of the Post-Termination Reserve Area. If the Company disputes the provision of the Post-Termination Reserve Area, the Parties shall submit such dispute to EDR pursuant to Section 14.2 of this Agreement.

(iii) Following delivery of a Dissolution Notice from BAC in connection with a Terminable Event pursuant to Section 7.2(a)(iv), and subject to approval or resolution in EDR of OpenBand's obligations pursuant to Section 7.2(e)(ii) of this Agreement, BAC or its designee shall purchase the Infrastructure and make a down payment to the Company in an amount equal to five percent (5%) of the Buy-Out Payment in accordance with Section 7.9 of this Agreement (the "Buy-Out Down Payment").

(iv) The Administrator selected from the OSPE List shall be terminated at the time of the Dissolution Notice.

(f) Accounting Firm. Upon Termination, an accounting firm selected and approved by the remaining Members at or after the date of Termination shall be responsible for assisting the Administrator with the orderly wind-up of the Company's business, including but not limited to, the disposition of all Company assets and other documents required to effectuate the Termination. If Termination results in a purchase of the Infrastructure by BAC pursuant to Section 7.9, a replacement Administrator shall be appointed pursuant to Section 3.2 above and within thirty (30) days following Termination and the replacement Administrator shall make an interim distribution pursuant to Section 5.4(a) of this Agreement once an appropriate reserve for creditors of the Company, if any, has been established.

7.3 Events of Default. The following actions shall constitute an event of default ("Event of Default") under this Agreement. Notwithstanding anything herein to the contrary, the provisions of this Section 7.3 shall not apply to (i) a Contribution Default as set forth in Section 4.1(c) of this Agreement, or (ii) a Security Default as set forth in Section 4.1(f)(ii)(A) of this Agreement.

(a) Breach Notice. During the term of this Agreement, a Party ("Claimant") may assert that the other Party has committed a breach of the terms of this Agreement (a "Breach"), by providing a written notice detailing the nature of the Breach (the "Breach Notice") to the Party against whom the Breach is being claimed (the "Breaching Party").

(b) Cure Period. The Breaching Party shall have forty-five (45) calendar days from receipt of the Breach Notice to cure said Breach, unless the cure period for such Breach is

otherwise established in this Agreement. If the Breaching Party does not contest the validity of the Breach Notice pursuant to Section 7.3(c) below and fails to cure said Breach within said applicable cure period, then such failure shall constitute an Event of Default and any and all rights in law and in equity shall be available to Claimant.

(c) Dispute Notice. If the Breaching Party contests the validity of the Breach Notice, this Section 7.3(c) shall govern any such contest. The Breaching Party must contest the validity of the Breach Notice within ten (10) business days after receipt of the Breach Notice by providing written notice to Claimant regarding its intent to contest the Breach Notice (the "Dispute Notice"). No more than two (2) business days after the Dispute Notice is received by Claimant, representatives of the Breaching Party and Claimant shall meet at a mutually agreeable location to seek to resolve the dispute regarding the Breach. The representatives shall work diligently and in good faith for a period of up to five (5) business days after receipt of the Dispute Notice to seek agreement upon a resolution of the asserted Breach (the "Breach Resolution"). The Breach Resolution shall include a specific cure period for resolution of the asserted Breach ("Resolution Period").

(d) Resolution Period. If the Parties develop a Breach Resolution, Claimant shall not, as to the subject matter of such Breach Resolution, exercise its rights granted under this Section 7 prior to expiration of the Resolution Period. The failure on the part of a Breaching Party to cure the Breach within the Resolution Period shall be deemed an Event of Default. If the Breaching Party effectuates a cure to the Breach within the Resolution Period, such prior asserted non-compliance shall not be deemed an Event of Default.

(e) Failure to Develop Breach Resolution. If the representatives do not develop a Breach Resolution within five (5) business days after Claimant's receipt of the Dispute Notice and the Breaching Party has not cured the Breach within such period, then Claimant may provide notice to Breaching Party that Claimant considers Breaching Party to have committed an Event of Default and the rights and remedies provided in this Section 7 shall be available to Claimant.

(f) Acknowledgment of Cure. Following the Breaching Party's proper cure of a Breach, Claimant shall upon written request deliver to the Breaching Party a written notice acknowledging that such cure has been adequately effectuated.

(g) Dispute Regarding Effective Cure. Expedited Dispute Resolution shall be utilized for the purpose of resolving any dispute as to whether a cure has been effectuated in accordance with the applicable Breach Resolution.

(h) Disputed Monetary Payments. If the Company disputes the amount of a deposit or payment to be made under this Agreement, whether pursuant to an audit or otherwise, it shall issue a Breach Notice and the Parties shall engage in the Breach Resolution process set forth in Section 7.3(c) through (g) of this Agreement. During said Breach Resolution process, OSPE may make a payment to the Company in the full amount assessed by the Company as due "on account." In such event, OSPE shall not be deemed to be in default with respect to such tendered amount. The Parties shall continue the Breach Resolution process. If as a result thereof,

it is determined that the Company was entitled to any of such disputed amount, it shall be paid by OSPE within ten (10) calendar days (with a credit for any previously tendered amount), and no other notice and cure period shall apply. Failure to pay any portion thereof not previously tendered shall constitute an Event of Default as to which no other notice and cure provisions apply, and shall constitute a Terminable Event. If the Breach Resolution process determination is that no or less than the fully disputed amount was due and owing, any amount previously tendered to the Company under this Section in excess of the determined amount shall be refunded by the Company to OSPE within ten (10) calendar days after such determination.

7.4 Conclusion of Affairs. Upon Termination for any reason, the Members shall promptly proceed to wind up the affairs of and liquidate the Company. Except as otherwise provided in this Agreement, the Members shall continue to receive the Guaranteed Payments, profits distributions and tax allocations during the period of liquidation in the same manner as before the Dissolution Notice. In winding up the affairs and liquidating the Company, the Company's accountants shall be engaged to assist the Administrator and Executive Committee regarding said process and to report to the Members. Further, subject to the rights and obligations conferred upon BAC in Section 7.9 of this Agreement:

(a) If Termination resulted because OSPE committed a Terminable Event, (i) to the extent necessary, Easement Two shall be conveyed and/or otherwise transferred or returned to BAC of record (the Company hereby appoints BAC as attorney-in-fact to effectuate such transfer), (ii) the rights and prospective obligations of the Company under the HOA Agreement will be assigned to BAC, (iii) the Company and BAC shall conduct the sale and purchase of the Infrastructure under Section 7.9 of this Agreement and shall convey to BAC to the extent necessary (A) the Infrastructure, (B) the property rights granted to the Company in connection with the Reserve Area in the Service Office and Remote Equipment Building, if built, or caused to be built, by OpenBand, (C) the rights conferred in accordance with the terms of a collocation agreement between the Company and OpenBand ("Collocation Agreement") (to be executed promptly following the execution of this Agreement), and (D) all of the books, records, plans, specifications, designs and such other tangible and intangible property as the Company may own to the extent usable and necessary for use by an Alternative Provider of one or more of the Services. If there is a purchase under Section 7.9 of this Agreement, then OpenBand's rights to the Infrastructure are automatically terminated after receipt of the five percent (5%) down payment pursuant to Section 7.2(d)(ii) of this Agreement, subject to its rights during the Continuing Period pursuant to Section 5.8 of the Service Agreement to perform its services thereunder.

(b) If Termination resulted because BAC committed a Terminable Event, (i) to the extent necessary, Easement Two shall be conveyed and/or otherwise transferred to OSPE, (ii) a memorandum setting forth 7.4(b)(i) shall be recorded in the appropriate land records office and the Company hereby appoints OSPE as its attorney-in-fact to execute all documents necessary to effectuate same of record, (iii) title to the Infrastructure, books, records, plans, specifications and designs shall be conveyed to OSPE, (iv) Easement Two will be amended to provide that BAC will receive as an easement fee, an amount equal to (A) the Guaranteed Payment, plus (B) Section 5.5 proceeds or payment under Section 7.7 (which if OSPE or an Affiliate is still the owner and/or operator of the System in 2025 will be deemed to be due and owing), BAC would have received if the Company had continued to exist, on the same schedule,

terms and conditions; but only for such time period until the Term of this Agreement would have expired if a Terminable Event had not occurred; provided however that, in the event Mandatory Subscription pursuant to the HOA Agreement is terminated, then the easement fee shall be reduced to equal what the Guaranteed Payment would have been for those Customers still receiving Services from OSPE, and (v) the rights and prospective obligations of the Company under the HOA Agreement shall be assigned from the Company to OSPE.

(c) Upon a mutually agreed upon dissolution (other than Sections 5.4(a) and (b)) BAC may purchase the Infrastructure from the Company at its independently appraised Fair Market Value (as defined in Section 8.7 of this Agreement) by written notice within thirty (30) calendar days from the date Members agree to dissolve by written notice. If BAC does not elect to purchase the Infrastructure or allows its thirty (30) day option to expire, the Company shall sell the Infrastructure to a third party upon arm's length terms and conditions.

7.5 Liquidating Distributions . After paying or providing for the payment of all debts, liabilities and obligations of the Company and all expenses of liquidation, and subject to the right of the Company to set up such reserves as it may deem necessary for any contingent or unforeseen liabilities or obligations of the Company, the proceeds of the liquidation and any other assets of the Company shall be distributed to or for the benefit of Members in accordance with this Agreement. The establishment of any reserve under this Section 7.5 shall only be upon approval by the Members and subject to the review of the Company's accounting firm.

7.6 Termination . Within a reasonable period of time following the completion of the liquidation of the Company, the Administrator shall supply to each Member a statement which shall set forth the assets and the liabilities of the Company as of the date of liquidation and each Member's portion of the distributions. Upon completion of the liquidation of the Company and the distribution of all Company assets, the Company shall cease and the Administrator shall have the authority and responsibility to execute and record a Certificate of Cancellation of the Company pursuant to the Act, as well as any other documents required to effectuate the Termination of the Company.

7.7 BACs Membership Interest Transfer at Expiration of Term . In connection with the expiration of the twenty five (25) year Term of the Company, BAC acknowledges and agrees that OSPE may acquire BAC's entire Membership Interest for a price equal to (i) twenty-five percent (25%) of the Company's Fair Market Value plus (ii) any loans made by BAC to the Company. The Company's "Fair Market Value" for purposes of this Section 7.7 shall be determined as a "going concern," and is unrelated to the value of BAC's Membership Interest. The process for determining Fair Market Value shall be as stated in Section 8.7. If OSPE elects to purchase BAC's Membership Interest, OSPE must give BAC written notice at least one hundred eighty (180) days prior to the expiration of the Term, as well as five percent (5%) of the Fair Market Value. The closing of such purchase shall occur by the expiration of the Term or within thirty (30) days after the determination of the Fair Market Value pursuant to Section 8.7, whichever is later. If OSPE acquires BAC's entire Membership Interest in accordance with this Section, (i) BAC shall grant OSPE an easement upon the same terms and conditions as Easement Two, and (ii) the Company's rights and obligations under the HOA Agreement shall be assigned at OSPE's election to OSPE. It is understood and agreed that under no circumstance will OSPE

be required to move, or lease to another party, the Service Office, unless otherwise provided herein.

7.8 Loss of Exclusivity .

(a) Level Two Condition. The Parties acknowledge that under the Services Agreement, if OpenBand commits a Level Two Condition (as defined in the Services Agreement) and loses its right to exclusively provide to the Company one or more of the Mandatory Services (the "Lost Service"), OpenBand will retain the exclusive rights to provide the other Mandatory Services to the Company utilizing Easement Two. If OpenBand commits a Level Two Condition pursuant to Section 5.2(b)(1)(A), Section 5.2(b)(1)(D) or Section 5.2(b)(1)(E) of the Services Agreement, the Members agree that BAC is still entitled to a payment from the Company as a "Guaranteed Payment" an amount equal to the greater of (i) the percentage of Revenue actually collected from Customers (including Customers who are no longer voluntarily electing to receive the Lost Service from the Company ("Lost Customers")) calculated pursuant to Section 5.1 (a) of this Agreement, or (ii) fifty percent (50%) of what the Guaranteed Payment to BAC would have been if OpenBand had continued to provide, and receive payments for, delivery of the Lost Service had Mandatory Subscription continued with respect to all Homeowners even though such Revenue is not actually being received by the Company. In the case of clause (ii) of the immediately preceding sentence, the Guaranteed Payment (prior to the fifty percent (50%) reduction) is calculated by (i) determining the number of Lost Customers, (ii) multiplying such number by the greater of (A) the non-promotional price being charged for the service to those Customers who are continuing to elect to receive the Lost Service from the Company, or (B) the price which was in effect for such Lost Service when it was most recently still a Mandatory Subscription, (iii) multiplying the product by 0.08, and (iv) subtracting from the product eight percent (8%) of the access fees being paid by the Lost Customers' alternate service providers related to the Lost Service as compensation to the Company for use of the Infrastructure to provide the Lost Service to the Lost Customers. Notwithstanding the foregoing, if OpenBand commits a Level Two Condition pursuant to Section 5.2(b)(1)(B) or Section 5.2(b)(1)(C) of the Services Agreement, BAC will not be entitled to a Guaranteed Payment covering Homeowners who are no longer receiving the Lost Service from OpenBand. The Parties agree to execute all documents and take all actions reasonably necessary to effectuate the intent of this Section.

(b) Third Party Action. If (i) any federal, state or local law, regulation or agency mandates or requires that Easement One or Easement Two or any part thereof not be exclusive to the Company, or alters, diminishes or reduces the exclusivity of Easement One or Easement Two in any material way such that the essence of Mandatory Subscription is violated, and (ii) the mandatory charges imposed by the Homeowner's Association to the Homeowners which are payable to the Company pursuant to the HOA Agreement, all in accordance with the Services Agreement are reduced, abated or altered, in any way so that Mandatory Subscription is diminished (collectively, the "Loss of Exclusivity"), then (i) OSPE shall not be bound to the terms of Sections 2.3, 3.1(viii), 5.1(a)(i), 5.1(a)(ii), and 5.1(a)(iv) of this Agreement for those Service(s) for which Mandatory Subscription no longer applies, and shall only make Guaranteed Payments for those Homeowners still receiving Services from OpenBand (ii) BAC shall not be bound by Section 2.3. To the extent that BAC is entitled to compensation from other service providers for use of the property, BAC shall assign such rights to negotiate and collect such

compensation to the Company, and said compensation, to the extent collected, shall constitute "Revenue" within the meaning of this Agreement.

(c) Facility Based Competition. Notwithstanding anything contained herein to the contrary, if (i) other than by reason of a Level Two Condition, Mandatory Subscription, in and of itself, is extinguished, altered or diminished in any way or (ii) there is any facility based competition for the provision of Services within the Development, then BAC shall receive a Guaranteed Payment pursuant to this Section 5.1 only for those Homeowners who continue to receive the Services from OpenBand or as to whom Mandatory Subscription continues to apply.

7.9 BAC Purchase Right .

(a) Of Infrastructure. If BAC issues a Dissolution Notice and initiates Termination of the Company, then contemporaneously with the issuance of such Dissolution Notice, BAC shall elect ("Dissolution Notice Election") that either (i) BAC or its designee shall purchase the Infrastructure and make a buy-out payment to the Company as set forth in this Section 7.9(a) for the Infrastructure (the "Buy-Out Payment"); or (ii) OSPE shall purchase BAC's Membership Interest in accordance with the value and procedure set forth in Section 7.7 of this Agreement; and Closing in either event shall occur within sixty (60) days of the Dissolution Notice Election. If BAC elects to purchase the Infrastructure in accordance with Section 7.9(a)(i) above and the Dissolution Notice is issued and/or such Termination is initiated before eleven (11) years from the Effective Date, then the Buy-Out Payment shall be an amount equal to the Unamortized Cost of the Infrastructure; provided, however, BAC shall not be obligated to include in the calculation of incurred costs, (i) costs for any equipment or portion of the Infrastructure not useable by an Alternative Provider, or (ii) any portion of the Infrastructure that does not meet the specifications in the Construction Agreement (or written specifications for any upgrade). If, however, BAC elects to purchase the Infrastructure in accordance with Section 7.9(a)(i) above and such Dissolution Notice is issued and such Termination is initiated on or after eleven (11) years from the Effective Date, then the Buy-Out Payment shall be an amount equal to the greater of Unamortized Costs as set forth above or a percentage of the Company's Fair Market Value as follows: (i) during Year 11, six and three-fifths percent (6.6%) of the Fair Market Value; (ii) during Year 12, thirteen and one-fifth percent (13.2%) of the Fair Market Value; (iii) during Year 13, nineteen and four-fifths percent (19.8%) of the Fair Market Value; (iv) during Year 14, twenty-six and two-fifths percent (26.4%) of the Fair Market Value; (v) during Year 15, thirty-three percent (33%) of the Fair Market Value; (vi) during Year 16, thirty-nine and three-fifths percent (39.6%) of the Fair Market Value; (vii) during Year 17, forty-six and one-fifth percent (46.2%) of the Fair Market Value; (viii) during Year 18, fifty-two and four-fifths percent (52.8%) of the Fair Market Value; (ix) during Year 19, fifty-nine and two-fifths percent (59.4%) of the Fair Market Value; (x) during Year 20, sixty-six percent (66%) of the Fair Market Value; (xi) during Year 21, seventy-two and three-fifths percent (72.6%) of the Fair Market Value; (xii) during Year 22, seventy-nine and one-fifth percent (79.2%) of the Fair Market Value; (xiii) during Year 23, eighty-five and four-fifths percent (85.8%) of the Fair Market Value; (xiv) during Year 24, ninety-two and two-fifths percent (92.4%) of the Fair Market Value; (xv) during Year 25, one hundred percent (100%) of the Fair Market Value. The Parties acknowledge that the method of computing "Fair Market Value" after eleven (11) years from the Effective Date shall be deemed fair and reasonable consideration. For purposes of this Section 7.9, Fair Market Value shall be calculated as set forth in Section 8.7 of this Agreement.

For purposes of this paragraph only, (i) the Fair Market Value used to calculate a Buy-Out Payment to OSPE pursuant to Section 7.9(a)(i) shall consider the cause of the Termination; and (ii) the Fair Market Value used to calculate a Buy-Out Payment to BAC pursuant to Section 7.9(a)(i) shall not consider the cause of the Termination. Notwithstanding anything to the contrary, to the extent Easement Two is revoked, the Fair Market Value shall be determined as if Easement Two is still in effect and revocation had not occurred.

OSPE shall not be entitled to remove any portion of the Infrastructure or equipment where the removal of equipment or a portion of the Infrastructure would detrimentally affect the functionality or utility of the Infrastructure for an Alternative Provider selected by BAC. Closing shall occur when the Dissolution Notice is delivered. The Company shall convey to BAC (A) the Infrastructure, (B) the property rights granted to the Company in connection with the Service Office Reserve Area and the Remote Equipment Building Reserve Area, (C) the rights conferred in accordance with the terms of the Collocation Agreement, and (D) all of the books, records, plans, specifications, designs, and such other tangible and intangible property as the Company may own to the extent usable and necessary for use by an Alternative Provider of one or more of the Services. The Parties shall execute all documents necessary and/or appropriate to consummate the transfer. The Buy-Out Payment shall be paid by BAC to the Company as follows: (i) five percent (5%) of the Buy-Out Payment shall be paid upon issuance of a Dissolution Notice, and (ii) the remainder of the Buy-Out Payment shall be paid without interest within six (6) months from Closing. All payments shall be made by cashier's check, cash or federal wire transfer.

(b) Of Membership Interest. BAC (or its designee) shall have the right to purchase OSPE's Membership Interest as an alternative to BAC's right to purchase the Infrastructure from the Company. The right to purchase OSPE's Membership Interest shall be on the same terms and conditions as BAC's Buy-Out rights under Section 7.9(a) with respect to purchase of the Infrastructure. In such event, the purchase price paid to OSPE (i) shall be on the same schedule as is set forth in Section 7.9(a) and (ii) shall be equal to the greater of (A) one hundred percent (100%) of Unamortized Costs if before eleven (11) years from the Effective Date, or (B) seventy-five percent (75%) of the amount calculated on the sliding scale of Fair Market Value if on or after eleven (11) years from the Effective Date, on the same basis as set forth in Section 7.9(a), plus the amount of any loans made by OSPE to the Company that remain outstanding. The Parties acknowledge that the method of computing "Fair Market Value" after eleven (11) years from the Effective Date shall be deemed fair and reasonable consideration. The Company's "Fair Market Value" for purposes of this Section 7.9(b) shall be determined as a "going concern" and is unrelated to the value of OSPE's Membership Interest. Notwithstanding anything to the contrary, to the extent Easement Two is revoked, the Fair Market Value shall be determined as if Easement Two is still in effect and revocation had not occurred.

7.10 Post-Termination Use .

(a) Limited Right. Notwithstanding anything contained herein to the contrary, it is agreed and understood that upon Termination under Article 5 of the Services Agreement, (i) OpenBand shall utilize the Inter-Connection Facilities (which OpenBand owns), (ii) OpenBand shall not have the right to use the Infrastructure, except during the Continuing Period pursuant to Section 5.8 of the Services Agreement, or as otherwise agreed to by the

Company, (iii) OpenBand shall utilize the Interoffice Facilities (which OpenBand owns subject to the Company's interest in the Reserved Fibers), and (iv) OpenBand shall have a non-exclusive easement and access right to enter upon and access the Infrastructure anywhere within the Development in all cases only to use the Inter-Connection Facilities, Interoffice Facilities (other than Reserved Fibers), Service Office and Remote Switch Module. The Parties will execute documents in recordable form at such time granting such easement access right. However, upon request by OSPE for use of the Infrastructure, the Parties will meet and negotiate to consider OSPE's continued use of the Infrastructure.

(b) Transition. In the event of a Level Three Breach of the Services Agreement, the Parties, at the appropriate time, shall cooperate in facilitating to the extent necessary the reassignment of the prefix used to identify Customers to a new local exchange carrier. Such a transition to the extent necessary will also include ported numbers from other exchanges and the local routing number ("LRN") for subscribers that reside within the Broadlands community. To the extent possible, the Parties will cooperate to take all steps to reassign the entire NPA-NNX code assigned to Customers to the new carrier. The Parties agree that such transition is in the best interests of end user customers and such customers' need to have unimpeded telephone service. In those cases when moving the entire NPA-NNX code is not possible, then Number Portability will be utilized. Number changes will only be considered as a last choice. In addition, the Parties will work cooperatively to facilitate the record transfer to the new carrier, including but not limited to, number and cable pair assignments, billing and feature records, class-of-service assignments, 911 records, PIC codes and other information to allow a seamless transition. OpenBand and the Company shall contemporaneously herewith or promptly after execution hereof execute the Service Office Reserve Area Lease, and, if the Remote Equipment Building is built, execute the Remote Equipment Building Reserve Area Lease.

(c) Video Headend Equipment. The Parties acknowledge that OpenBand has licensed to the Company, as a fully paid up license, the Video headend equipment (which is part of the Service Office and owned by OpenBand) for the Company's or its Alternative Provider's use for the six month period following termination of this Agreement and any transition period pursuant to Section 7.10(b) hereof due to a Level Three Breach of the Services Agreement. During such six month period, OpenBand shall operate the Video headend equipment in a caretaker capacity on behalf of the Company and use such equipment for the provision of Video Services reasonably requested by the Company and the costs charged by OpenBand for such Services shall be a pass-through of those direct costs incurred by OpenBand for such Services. The Parties acknowledge that OpenBand shall ensure the following: (i) such video headend equipment shall reside and operate within the Service Office Reserve Area; (ii) that the optical fiber local distribution cables associated with video delivery to the Development shall terminate on a FDI, LGX or equivalent panel located within the Service Office or elsewhere in the Development; and (iii) that the FDI, LGX or equivalent panels, and access thereto, shall be constructed to facilitate an Alternative Provider's interconnection. The Parties acknowledge and agree that in any event, the Service Office Reserve Area shall include any and all cable television operating equipment, and space to house such equipment, necessary to enable an Alternative Provider's provision of Video Service to the Development.

(d) Internet Headend Equipment. The Parties acknowledge that OpenBand has licensed to the Company, as a fully paid up license, the Internet headend equipment (which is part of the Service Office and owned by OpenBand) for the Company's or its Alternative Provider's use for the six month period following termination of this Agreement and any transition period pursuant to Section 7.10(b) hereof due to a Level Three Breach of the Services Agreement. During such six month period, OpenBand shall operate the Internet headend equipment in a caretaker capacity on behalf of the Company and use such equipment for the provision of Internet Services reasonably requested by the Company and the costs charged by OpenBand for such Services shall be a pass-through of those direct costs incurred by OpenBand for such Services. The Parties acknowledge that OpenBand shall ensure the following: (i) that such Internet headend equipment shall reside and operate within Service Office Reserve Area; (ii) that the optical fiber local distribution cables associated with Internet/video delivery to the Development shall terminate on a FDI, LGX or equivalent panel located within the Service Office or elsewhere in the Development; and (iii) that the FDI, LGX or equivalent panels, and access thereto, shall be constructed to facilitate an Alternative Provider's interconnection. The Parties acknowledge and agree that in any event, the Service Office Reserve Area shall contain any and all cable television operating equipment, and space to house such equipment, necessary to enable an Alternative Provider's provision of Internet Service to the Development.

7.11 Easement Four. The Parties acknowledge and agree that (i) Easement Four is not governed by the terms of this Agreement and (ii) termination of this Agreement does not terminate or affect Easement Four in any way.

SECTION VIII TRANSFERS OF MEMBERSHIP INTERESTS AND THE SUBSTITUTION OF MEMBERS

8.1 Restrictions on Transfers. BAC may only sell, convey, transfer or assign (collectively, "Transfer") not less than its entire Membership Interest to any third party that is not a Direct or Indirect Competitor (or Affiliate thereof) of OSPE and its Affiliates at any time without prior written approval from OSPE; provided, however, that BAC may not Transfer any portion of its Membership Interest to the Homeowner's Association. Upon written request of BAC, OSPE shall provide BAC with a list of all its Affiliates within ten (10) days after such request is made. BAC may not Transfer any part or all of its Membership Interest to a Direct Competitor or Indirect Competitor without OSPE's prior written approval. BAC shall first provide written notice ("Transfer Notice") to OSPE of a proposed Transfer which notice shall include a copy of the intended Transfer purchase agreement identifying the potential acquirer and its Affiliates and stating all consideration, terms and conditions of the proposed Transfer. OSPE shall have thirty (30) calendar days from the date the Transfer Notice is received to review the Transfer offer and to notify BAC whether OSPE will agree to acquire BAC's Membership Interests on the same price, terms and conditions as specified in the Transfer Notice. OSPE shall have the right to reasonably determine what, if any, of its proprietary documentation and facilities concerning technology or services and physical access to such proprietary documentation and facilities will be provided under the Transfer to a Direct or Indirect Competitor. Physical access to the equipment and software configurations shall not be unreasonably withheld, conditioned or delayed. If BAC sells, conveys, transfers or assigns its Membership Interest, the Executive Committee shall immediately dissolve and the Company

shall be operated and managed in accordance with Section 3.10 of this Agreement. Notwithstanding the foregoing, OpenBand shall grant any potential acquirer (who is not a Direct Competitor or Indirect Competitor) identified pursuant to this Section the right to inspect on OpenBand's premises all documentation relating to the Infrastructure including proprietary documentation and facilities, for the purpose of reviewing (without removing) such documentation and facilities, pursuant to a confidentiality agreement reasonably acceptable to the Parties. The Parties agree to draft such a mutually acceptable form of confidentiality agreement promptly after the execution of this Agreement. OSPE can never Transfer its Membership Interest, unless to an Affiliate, without the prior written consent of BAC, and subject to the Tag-Along rights set forth in Section 8.2. For purposes of this Section 8.1 only, a transfer of a Controlling Interest in OSPE shall be subject to the same limitation as a Transfer of OSPE's Membership Interest. A Transfer of OSPE's Membership Interest or a Transfer of the ownership interests in OSPE having the effect of changing the Controlling Party of OSPE shall be null and void unless such interests are transferred as a whole and the Transfer is approved by BAC in writing within thirty (30) calendar days of written notice of the proposed sale by OSPE (such approval not to be unreasonably withheld, conditioned or delayed). So long as timely and actual receipt by BAC of the notice of such sale is confirmed, if BAC has failed to approve or reject the notice within thirty (30) calendar days, the transfer will be deemed approved. Nothing in this Section shall be construed to prevent any of OSPE's owners or Affiliates from admitting additional investors or publicly offering common stock or other ownership interests to the general public pursuant to a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended, as long as such action is consistent with Section 5.4(c) of the Services Agreement.

8.2 Tag-Along Rights

(a) Transfer Notice. If OSPE receives or makes an offer to Transfer (a "Transfer Offer") any or all of its Membership Interests or ownership interests in OSPE from any third party, and OSPE or its owners desires to accept the Transfer Offer, OSPE shall at least thirty (30) calendar days prior to acceptance give written notice thereof (the "Transfer Notice") to BAC. The Transfer Notice shall include a copy of the intended Transfer Offer, and shall contain the amount of Membership Interests or ownership interests to be transferred, consideration to be paid, all other terms and conditions, and the proposed date of consummation of the proposed Transfer.

(b) BAC Tag-Along Rights. BAC may elect, by delivering to OSPE a written notice (the "Tag-Along Notice") of its election within thirty (30) calendar days after receipt of the Transfer Notice (the "Tag-Along Period"), to sell its Membership Interests to such proposed Transferee on the same consideration, terms and conditions specified in the Transfer Notice. If BAC exercises its rights pursuant to this Section 8.2, BAC shall transfer the Membership Interests, free and clear of all liens and security interests, to the proposed transferee contemporaneous with OSPE's Transfer. So long as timely and actual receipt by BAC of the Transfer Notice is confirmed by BAC, the failure of BAC to submit the Tag-Along Notice within the Tag-Along Period shall constitute an election on the part of BAC not to participate in such Transfer. If BAC exercises its Tag-Along rights by timely submitting or is deemed to have timely submitted the Tag-Along Notice, OSPE shall not be permitted to consummate a transfer of OSPE's Membership Interests or ownership interests in OSPE without the concurrent transfer

of BAC's Membership Interests under the same terms and conditions. Any purported such Transfer of OSPE's Membership Interests or ownership interests in OSPE without the concurrent transfer of BAC's Membership Interests shall be null and void and unenforceable, unless BAC failed to submit a Tag-Along Notice upon terms set forth herein or BAC elected not to participate on such notice.

8.3 Admission of Transferee. Notwithstanding anything to the contrary, no transferee of a Membership Interest shall have the right to become a Member unless the transferee agrees to be bound by all of the terms and conditions of this Agreement. Unless and until a transferee is admitted as a Member, the transferee shall have no right to exercise any of the powers, rights and privileges of a Member under this Agreement. The Company shall require all future Members of the Company to execute this Agreement as a precondition to the issuance of Membership Interests or Membership Units in the Company.

8.4 Transfers to Affiliates. Notwithstanding Sections 8.1 and 8.2 of this Agreement, any Member may Transfer any part or all of its Membership Interests and OSPE's owner(s) may transfer its (or their) ownership interests in OSPE to an individual, corporation, partnership, limited liability company or other business entity in which one hundred percent (100%) of each class of the voting stock, partnership interests or membership units are owned by the original Member or the original Member's direct legal parent entity or entities without triggering Tag Along Rights. Notwithstanding anything contained herein to the contrary, OSPE may Transfer any or all of its Membership Interests, or the ownership interests in OSPE may be transferred, to either (i) William Dean, (ii) a business entity which William Dean directly controls and owns, (iii) a Employee Stock Ownership Plan of an entity which William Dean directly controls and owns, (iv) a member of William Dean's immediate family or a trust in which William Dean is settlor and trustee and William Dean's immediate family members are the beneficiaries of the trust; or (v) upon BAC's approval (not to be unreasonably withheld, conditioned or delayed). Notwithstanding anything contained in the Transaction Documents to the contrary, for the purpose of the Transaction Documents, any transferee described in items (i) through (iv) of this Section shall be deemed to be an Affiliate of OpenBand and the Contractor.

8.5 New Membership Interests. Upon approval by all of the Members, the Company may issue additional Membership Interests to any new or existing Member for a price approved and determined by the Members.

8.6 Sale to Company of Membership Interests Upon Certain Events. If a Member files a Bankruptcy Action, the non-bankrupt Member shall have the option but not the obligation, to be exercised in writing within one hundred twenty (120) calendar days after actual notice of the Bankruptcy Action ("BR Notice") to the bankrupt Member or within thirty (30) days from the date Fair Market Value of the bankrupt Member's Membership Interest is determined pursuant to Section 8.7 below, whichever is later ("BR Purchase Deadline"), to purchase the Membership Interest of the bankrupt Member for a price equal to the amount of loans made by the bankrupt Member to the Company that remain outstanding plus its fair market value as such term is determined below in Section 8.7 ("Fair Market Value"). Notwithstanding anything to the contrary, to the extent Easement Two is revoked, the Fair Market Value shall be determined as if Easement Two is still in effect and revocation had not occurred. The purchase price of the Membership Interest transferred pursuant to this Section 8.6 shall be paid by means

of a promissory note, secured by the Membership Interest so transferred and payable on the first anniversary of its issuance, and shall bear interest at a rate equal to the Prime Rate as stated in the Wall Street Journal measured on the date of the promissory note. The purchasing Member shall deliver an executed promissory note to the selling Member, and the selling Member shall execute and deliver an assignment and assumption agreement and any other documents reasonably requested by the purchasing Member in a form specified by the purchasing Member on the Closing Date as defined below. For purposes of this Section 8.6, Closing Date shall mean that date no later than the BR Purchase Deadline on which Closing occurs, as selected by the purchasing members. If BAC files a Bankruptcy Action, the Executive Committee shall immediately dissolve and the Company shall be operated and managed in accordance with Section 3.10 of this Agreement. Upon the adjudication of bankruptcy, insolvency, dissolution or other event resulting in cessation to exist as a legal entity, the authorized representative of such entity shall have all the rights of a Member for the purpose of effecting the orderly winding-up and dissolution of the business of such entity.

8.7 Fair Market Value. For purposes of Article 5, Sections 7.7, 7.9 and 8.6 only, Fair Market Value shall mean the price negotiated in good faith by the Members within thirty (30) calendar days from the receipt of the BR Notice under Section 8.6 or OSPE's purchase election notice under Section 7.7 or dissolution pursuant to Article 5 (collectively, the "Purchase Notice"). If the Members cannot agree on a price within the time period set forth in the preceding sentence, then Fair Market Value for purposes of only Section 7.7 or 8.6 shall be established as follows: (i) both BAC and OSPE shall each select an appraiser who will submit an appraisal within sixty (60) days after the Purchase Notice; (ii) if the difference between the two appraisals is less than or equal to twenty-five percent (25%) of the appraisal values, the arithmetic average of the two appraisers' valuations of such Membership Interest shall constitute Fair Market Value; (iii) however, if the difference between the two appraisals is greater than twenty-five percent (25%) of the appraisal values, then the two appraisers shall pick a third appraiser within ten (10) days after issuance of the two appraisals who shall submit an appraisal within thirty (30) days after its selection. If the third appraisal falls between the two original appraisals, then Fair Market Value shall equal the arithmetic average of the two closest appraisals. If the third appraisal does not fall between the two original appraisals, then the third appraisal shall be disregarded and the Fair Market Value shall equal the arithmetic average of the two original appraisals. If the two original appraisers cannot agree on the third appraiser (as provided for in Section 8.7(iii)), then the Parties shall request that the American Arbitration Association select the third appraiser. Throughout this process, the third appraiser shall not be supplied with the values determined by the previous two appraisers. The appraisers shall each have no less than seven (7) years of experience as business appraisers and be experienced in the industry in which the Company conducts its operations. Each Party shall select its respective appraiser within forty-five (45) calendar days from the receipt of the Purchase Notice, and each appraiser shall be independent, (i.e., not related to either Party or an Affiliate). In any event, Fair Market Value for purposes of this section shall be determined within ten (10) days of submittal of the final required appraisal(s). If a Party fails to timely select its appraiser or an appraiser fails to timely submit his or her appraisal, the determination of Fair Market Value by the appraiser selected by the other Party shall be conclusive. Each Party shall bear the cost of its appraiser. The costs of the third appraiser, if necessary, shall be borne equally by the Parties.

8.8 Sale of Revenue Stream; Liens . Notwithstanding Section 8.1, BAC shall have the right to assign or sell the Guaranteed Payments, Section 5.4 and 5.5 distributions and Section 7.7 and Section 7.9 payments, or any portion thereof which it is entitled to receive from the Company or to place a lien on such payments; provided, however, that such assignment, sale or lien shall not be to or for the benefit of (i) a Direct or Indirect Competitor of OSPE and its Affiliates, or (ii) the Homeowner's Association. Notwithstanding Section 8.1, OSPE shall have the right to pledge, secure or permit a lien to be placed upon ("Pledge"), for the benefit of an institutional lender providing construction financing, the Section 5.4 and 5.5 distributions, or any portion thereof which OSPE is entitled to receive from the Company, provided that no such Pledge shall be permitted without the prior written approval by BAC of the documentation effectuating such Pledge. No Member has the right to create or permit a lien or security interest on its Membership Interests, except that BAC may do so subject to the provisions of Section 8.1 hereinabove. The Company shall not create or permit a lien or security interest on its income, revenue, accounts receivable, equipment, or any other assets without the prior written approval of all of the Members.

8.9 No Warrants or Options . The Company shall not issue warrants or options to purchase Membership Interests.

SECTION IX DEVELOPMENT LAND USE

9.1 Development Areas Not Serviced . If on September 1, 2007, the Development does not consist of at least one thousand (1,000) Homes constructed or under construction, then the Administrator shall call a meeting of the Members to be held in September, 2007. At such meeting, OSPE shall have the right, but not the obligation, to have the Company decline to provide Services to that portion of the Development which is not constructed or under construction ("Not Built") or a designated portion thereof (the "Not to be Serviced Areas"). In such event, (a) the HOA Agreement shall be revised to "contain" the provisions of Services by the Company to those areas within the Development already containing Infrastructure together with the Not Built areas, if any, which OSPE continues to desire the Company to provide Services in the future, such that no Services will be provided to the Not to be Serviced Areas, (b) this Agreement, the Construction Agreement and the Services Agreement shall be revised to reflect the reduced area within the Development to which Services will be provided, and (c) Easement Two will be revised to withdraw all Not to be Serviced Areas from the terms of Easement Two (including the covenant not to grant telecommunications easements to others). The Parties acknowledge that in such event, the HOA will revise its assessment procedures such that Homeowners of the Not to be Serviced Areas will not be subject to HOA dues related to Services provided by the Company.

9.2 Video Services

(a) Franchise Decision. After the start of the seventh (7th) year from the date of Infrastructure activation, if a final and binding determination in a court or regulatory forum is made specifically stating that OBM must obtain a full franchise to provide Video Services (a "Franchise Decision"), the Parties acknowledge that pursuant to Section 2.1(e) of the Services Agreement OBM shall have thirty (30) days after such determination to give notice to the Company that it elects not to provide Video Services to those Homeowners for which OBM is not then already providing Video Services ("Future Homeowners").

(b) Changes if Franchise Decision Made. In the event that (i) a Franchise Decision is made; and (ii) OBM can not demonstrate within thirty (30) days from the Franchise Decision that OBM can lawfully provide Video Services or OBM elects pursuant to Section 2.1(e) of the Services Agreement not to provide Video Services, then the Parties acknowledge that (a) the Company and OBM shall cause the HOA Agreement to be revised so that OBM will not be required to provide Video Services to the Future Homeowners, (b) the Company and OBM or their Affiliates shall cause the Three Agreements (and, if necessary, the Ancillary Agreements) to be revised in order to reflect the designated area within the Development to which Services will be provided, (c) Easement Two will be revised to revoke the exclusivity regarding Video Services as to areas in which the Future Homeowners shall reside (Easement Two shall also be revised to remove the covenant restricting the grant of telecommunications easements to others as it relates to Video Services only). The Parties also acknowledge that if a Franchise Decision is made and OBM elects not to provide Video Services, the HOA shall have the right to revise its assessment procedures such that the Future Homeowners will not be subject to Mandatory Subscription as such Mandatory Subscription relates to Video Services provided by the Company, and (d) OBM shall provide inter-connection to and use of its facilities and access to plant and facilities, including without limitation, the Interoffice Facilities and, to the extent used by OpenBand, the Infrastructure for any new provider of Video Services that the Company shall select at a charge equal to (i) the actual costs of the interconnection; and (ii) any incremental cost on a going forward basis.

9.3 Change in Land Use

(a) Change in Use of Development Portion. If there is a change in use of all or any part of the Development or sale of all or any part of the Development to another developer that results in all or any part of the Development ("Affected Portion") being exempt from or otherwise not subject to the Mandatory Subscription ("Change in Use"), then BAC shall cause its parent, Developer, promptly to give notice of such Change in Use to the Company and to OpenBand. The Parties acknowledge that pursuant to Section 2.1(f) of the Services Agreement OpenBand shall have sixty (60) days from the date of such notice to determine whether OpenBand will choose to provide (or continue to provide) Services to the Affected Portion.

(b) Provision of Service after Change in Use. If, pursuant to Section 2.1(f) of the Services Agreement, OpenBand agrees to provide or continue providing Services to the Affected Portion(s) following a Change in Use, then such Services shall be deemed to be "Premium Services" for purposes of the Three Agreements (and, if necessary, the Ancillary Agreements).

(c) Non-Provision of Service after Change in Use. If, pursuant to Section 2.1(f) of the Services Agreement, OpenBand chooses not to provide Services to the Affected Portion(s), then the Parties acknowledge that (i) the Company and OpenBand shall cause the HOA Agreement to be revised to confine the provisions of Services by the Company to those areas within the Development already containing Infrastructure and to which the Company continues to desire OpenBand to provide Services in the future, such that no Services will be provided to the Affected Portion(s), (ii) the Three Agreements (and, if necessary, the Ancillary Agreements) shall be revised to evidence that certain provisions contained therein shall not apply to the Affected Portion(s), and (iii) Easement Two will be revised to withdraw all Affected Portions from the terms of Easement Two (including the covenant not to grant telecommunications easements to others in the Affected Portion(s)). The Parties acknowledge that in such event, the HOA shall have the right to revise its assessment procedures such that the Homeowners in the Affected Portion(s) will not be subject to HOA dues related to Services provided by the Company.

SECTION X ADMINISTRATIVE PROVISIONS

10.1 Bank Accounts . Funds of the Company shall be deposited in an account or accounts in a bank or other financial institution which is a participant in the federal insurance program. The Administrator shall arrange for the appropriate provisions of such accounts. Funds may be withdrawn from such accounts only for bona fide and legitimate Company purposes.

10.2 Books and Records .

(a) At all times during the term of the Company, the Administrator shall keep, or cause to be kept, full and faithful books of account, records and supporting documents which shall reflect, completely, accurately and in reasonable detail, each transaction of the Company, including, without limitation, transactions with the Members and their Affiliates. The books of account shall be maintained, and tax returns prepared and filed, in accordance with the method of accounting determined by the Administrator. The books of account, records and all documents and other writings of the Company shall be kept and maintained at the principal office of the Company. Each Member or its designated representative shall have access to such financial books, records and documents during reasonable business hours and may, at any time, inspect and make copies of any of them at its own expense. It is agreed by the Members that the Company's books will be used to track revenue, expenses of the Company, the Guaranteed Payment to BAC, and the distribution to OSPE. OSPE's books will not be available for review by the Members or the Company, except to determine the Opportunity Fee and Guaranteed Payment to BAC.

(b) The Administrator shall cause the Company to keep at its principal office (i) a current list of the full name and last known business address of each Member, (ii) a copy of the Articles and all amendments, (iii) copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years, (iv) a copy of this Agreement and any other contracts or agreements, (v) copies of the Company's financial statements for the three

most recent years, and (vi) any other information or records required by the Act or other applicable laws. Such items will be made available for review in accordance with subsection (a) above.

SECTION XI INDEMNIFICATION OF THE EXECUTIVE COMMITTEE, THE ADMINISTRATOR AND MEMBERS

The Company shall and does hereby indemnify and hold harmless, each Member and its Affiliates (and each Member's and each Member's Affiliates respective owners, partners, officers, directors, administrators, employees or agents), and the members of the Executive Committee from and against any loss, expense, damage or injury suffered or sustained by reason of any acts, omissions or alleged acts or omissions taken or omitted in good faith (and not performed or omitted with gross negligence, intent to defraud or as a result of willful misconduct) arising out of such Member's activities on behalf of the Company or in furtherance of the interests of the Company as provided in this Agreement, including but not limited to any judgment, award, settlement, reasonable attorneys' fees, any other costs or expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim. This Section is not intended to expand or enlarge any liability of the individual Members. The Members by this Section do not waive any rights, claims, or defenses they may have that they are not individually liable in their capacity as Members for any claim made against the Company. No Member shall be required to pay any sums to indemnify the Company or its Members under this Section 11.

SECTION XII REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of BAC . As of the Effective Date, BAC represents and warrants to the Company and OSPE as follows:

(a) Organization and Standing. BAC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business as a foreign corporation in every jurisdiction where such qualification is necessary for BAC to perform its duties under this Agreement.

(b) Authorization and Binding Obligation. BAC has full corporate power and authority to enter into, deliver and fully perform this Agreement. This Agreement has been duly executed and delivered by BAC, and constitutes the valid and binding obligation thereof.

(c) No Prohibition on Performance. There exists no event or circumstance within the control of BAC or to the knowledge of BAC, which precludes or prohibits BAC from performing its obligations under this Agreement.

(d) Homeowner's Association Documents. The CC&R's, Bylaws, and Articles of Incorporation for the HOA, Inc. have been submitted for the Loudoun County Attorney's approval in the form attached as Exhibits H, O and P, and are incorporated by reference herein (collectively, the "HOA Governing Documents").

(e) Housing Units in the Development. The Development's preliminary site plan is attached as Exhibit A and incorporated by reference herein. Zoning for the Development has been approved by Loudoun County for eleven hundred eighty (1,180) housing units to be built in the Development. No warranty is made with respect to the number of units which will be developed and constructed within the Development.

12.2 Representations and Warranties of OSPE. As of the Effective Date, OSPE represents, warrants and covenants to the Company and to BAC as follows:

(a) Organization and Standing. OSPE is a special purpose entity formed and owned by M.C. Dean, Inc. as a limited liability company duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia and is qualified to do business as a foreign corporation in every jurisdiction when such qualification is necessary for OSPE to perform its duties under this Agreement.

(b) Authorization and Binding Obligations. OSPE has full corporate power and authority to enter into, deliver and fully perform this Agreement. This Agreement has been duly executed and delivered by OSPE, and constitutes the valid and binding obligation thereof.

(c) No Prohibition on Performance. There exists no event or circumstance within the control of OSPE or to the knowledge of OSPE which precludes or prohibits OSPE from performing its obligations pursuant to this Agreement.

12.3 Representations and Warranties Indemnification. BAC and OSPE agree to indemnify, defend and hold each other harmless, from and against all liability, loss, cost, damage or expense incurred by the other by reason of or resulting from the willful misconduct of the other Party or a breach by the other Party of any representation or warranty of said Party contained in this Agreement.

SECTION XIII COVENANTS

13.1 BAC. BAC covenants the following provisions to the Company and OSPE, such provisions shall be continuing obligations of BAC for the entire Term:

(a) Easements. Easement One, Easement Two and Easement Four will be duly executed and recorded on or before the execution of this Agreement. BAC warrants and represents that it has good and marketable title to Easement Two, subject to the rights and exceptions as set forth on Developer's title insurance policy, a copy of which is attached as Exhibit R, and is able to grant Easement Two. BAC makes no representation or warranty with respect to the enforceability by operation of law of Easement Two.

(b) HOA Agreement. BAC shall cause the Developer to cause the HOA to enter into that certain HOA Agreement attached as Exhibit I with the Company.

(c) Service Office Land and Remote Equipment Building. BAC shall cause Developer to enter into the Lease attached as Exhibit C (Service Office Land), the SMATV Lease attached as Exhibit V (SMATV), the Remote Equipment Building Lease (if OpenBand elects to build the Remote Equipment Building), and any other agreements to which Developer is a party as set forth herein.

13.2 OSPE. OSPE covenants the following provisions to the Company and to BAC, such provisions shall be continuing obligations of BAC for the entire Term:

(a) Skilled and Licensed Staff. OSPE will employ a sufficiently skilled and licensed staff that is capable of performing the duties and obligations of OSPE pursuant to this Agreement.

(b) No Bankruptcy. OSPE shall not file any Bankruptcy Action.

(c) No Debts. OSPE shall not lend nor guarantee the debts of another during the term of this Agreement.

(d) No Sale or Transfer. OSPE shall not permit the sale or transfer of any ownership interests in, or the material assets of, OSPE to another entity or individual during the term of this Agreement unless expressly permitted under this Agreement.

(e) Limitation on Activities. OSPE shall not own any other asset nor conduct any other business other than as a Member in the Company.

(f) Remote Equipment Building and SMATV. OSPE shall cause OpenBand or M.C. Dean, Inc. to enter into the Service Office Reserve Area Lease as attached to Exhibit Z, the Lease attached as Exhibit C (Service Office Land), the SMATV Lease attached as Exhibit V, the Remote Equipment Building Lease and Remote Equipment Reserve Area Lease (if OpenBand elects to build the Remote Equipment Building), and any other agreements to which OpenBand or M.C. Dean, Inc. is a party as set forth herein.

(g) Articles of Organization. OSPE's Articles of Organization shall provide that any purported transfer of ownership interests in violation of the requirements of this Agreement shall be null and void ab initio.

13.3 Covenant Indemnification. BAC and OSPE agree to indemnify, defend and hold each other harmless, from and against all liability, loss, cost, damage or expense incurred by the other by reason of or resulting from the willful misconduct of the other Party or a breach by the other Party of any covenant of said Party contained in this Agreement.

SECTION XIV GENERAL PROVISIONS

14.1 Dispute Resolution . If a dispute arises out of or relates to this Agreement other than a breach subject to Section 7.3 of this Agreement or Expedited Dispute Resolution pursuant to this Agreement, following receipt of written notice of a dispute ("DR

Notice”) by one of the Members from the other, the Members shall endeavor to settle the dispute first through direct discussions among their respective representatives on the Executive Committee of the Company. If the Members’ representatives on the Company’s Executive Committee cannot resolve the dispute within five (5) business days after delivery of the DR Notice (“Negotiating Period”), the Members agree to proceed to mediation as provided below. Pending the resolution of any dispute, all Members shall continue to fulfill their respective obligations under this Agreement. If a dispute is not resolved within the time limit set forth above, the Members agree to proceed to mediation of the dispute under the Mediation Rules of the American Arbitration Association (“AAA”) by either Member filing a request to AAA therefor within twenty-five (25) calendar days after conclusion of the Negotiating Period and to take all efforts to conclude such mediation within ten (10) business days after the filing by a Member of a request to AAA for mediation. Each Member agrees to pay its own costs, plus an equal share of the costs of the mediator and mediation facilities. If a dispute is not resolved by mediation within the time provided above, either Member may elect to pursue any appropriate legal and/or equitable remedy. Notwithstanding the foregoing, where necessary to ensure continued and safe provision of Services to Homeowners in the Development in accordance with the Performance Criteria or otherwise in the event of an unusual circumstance in which it is necessary to cause certain acts to occur (or not to occur) in order to avoid irreparable injury, either Party may proceed with any remedy in any forum, including without limitation equitable remedies such as temporary restraining orders or injunctions, without waiting for the conclusion of the procedures in this Section 14.1. The Parties shall continue to retain any rights under this Agreement, whether related to or unrelated to the provision of Services, without waiting for the conclusion of the procedures in this Section 14.1, if such right would be unduly delayed or impeded due to the time period required to wait for resolution under this Section.

14.2 Expedited Dispute Resolution. Wherever this Agreement requires the use of Expedited Dispute Resolution, the process contained in this Section shall be used. “Day One” shall be deemed to be either the day a Party gives written notice of a dispute or objection, or a request for Expedited Dispute Resolution, regarding a matter to which Expedited Dispute Resolution applies under this Agreement (“EDR Notice”). For purposes of this Section, the EDR Notice must be in writing and provided by means of same-day delivery, such delivery subject to confirmation, including hand-delivery of written notice, telecopy, or electronic mail, with a duplicate original sent by overnight delivery. The EDR Notice shall specify the issues in dispute and the outcome desired by the Party giving such notice (“Noticing Party”). The Parties, after receipt of the EDR Notice, shall negotiate in good faith for five (5) business days in an attempt to resolve the dispute (“Initial Period”). During the Initial Period, and at the same time the negotiations described in the preceding sentence are taking place, (1) the Noticing Party shall file a request (“Request for Arbitration”) with the American Arbitration Association (“AAA”) to appoint an arbitrator with expertise in communications-related issues (“Arbitrator”) (or other matters as may depend on the nature of the dispute), and (2) each Party to the dispute will appoint an expert with knowledge of the subject matter of the dispute (“Party Experts”). The Request for Arbitration shall include a copy of this Section and a statement directing the Arbitrator to conduct the proceedings and render a decision consistent herewith. If the dispute is not resolved within the Initial Period, the Party Experts shall thereafter for a second five (5) business day period commencing immediately upon conclusion of the Initial Period (“Second Period”) meet and (1) negotiate in good faith in an attempt to develop a consensual resolution, and (2) develop a position acceptable to each such Party as to the appropriate final resolution of

the dispute ("Final Position"). If the dispute is still unresolved after the Second Period, the Parties will, within five (5) business days after the conclusion of the Second Period, submit their Final Positions in writing, with a written statement of reasons, to the Arbitrator and to all other Parties ("Submission"). The Arbitrator will then be required to render a final decision, with reasons stated, within fifteen (15) business days of the date of receipt of all Parties Submissions (or within fifteen (15) business days after appointment of the Arbitrator if such appointment is not in place at the date for submittal of the Submissions despite all Parties' good faith efforts and for reasons outside the Parties' control, in which case the Parties shall diligently and in good faith seek the appointment of the Arbitrator as soon as possible) ("Arbitration Period"). Failure to submit a Submission within the required time shall be deemed a waiver of such Party's right to submit a Submission, unless a late submittal is expressly permitted by all other Parties to the dispute. The Arbitrator will be directed to select one of the Parties' Final Positions without change. The Arbitrator's decision will be final and binding upon the Parties. Any arbitration decision which deviates from one of the Parties' Final Positions shall include a written statement of the reasons, including a specific statement of the "extraordinary circumstances," that justifies such a deviation. The Arbitrator may, in his or her discretion, convene one (1) hearing, on no less than five (5) business days written notice, such hearing not to exceed one (1) day in length; provided that the convening of such a hearing shall not extend the time period that the Arbitrator has to render a final decision. Availability of discovery shall be only at the discretion of the Arbitrator. Any request for discovery shall be made at the time of submittal of the Submissions, with reasons stated. The presumption shall be against the allowance of discovery unless the Arbitrator determines that discovery is materially necessary to a just resolution of the dispute. The Arbitrator may award costs, including attorney's fees, incurred in pursuing such Expedited Dispute Resolution, in his or his discretion. Unless otherwise stated or modified, all other applicable rules of the AAA shall apply.

14.3 Amendment . Except as provided by law or otherwise set forth in this Agreement, this Agreement and/or the Articles may be only modified or amended upon the written approval of Members owning all of the Membership Interests.

14.4 Severability; Compliance with Laws . If any portion of this Agreement is declared invalid or unenforceable by a court or governmental authority of competent jurisdiction, or unenforceable as to specified Persons, this shall not affect the validity or enforceability of any remaining portions, or as to all other which such remaining portion(s) shall remain in full force and effect and subject to all other Persons, as if this Agreement had been executed with the invalid or unenforceable portion(s) eliminated.

14.5 Burden and Benefit Upon Successors . Except as expressly otherwise provided herein, this Agreement is binding upon, and shall inure to the benefit of, the Members and their respective successors and permitted assigns.

14.6 Further Assurances . Each Member agrees that it shall, or cause its Affiliate to, execute and deliver such further instruments, provide all information, and take or forbear from taking such further actions and things as may be reasonably required or appropriate to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms of this Agreement.

14.7 No Solicitation . During the term of this Agreement, no Party or Affiliate shall hire, as an employee, consultant or independent contractor, any employee or consultant of the other Party or its Affiliates (collectively, "Current Employer") for one (1) year after such employee or consultant terminates his relationship with the Current Employer.

14.8 No Waiver . No failure or delay by a Party in exercising any right or remedy under this Agreement and no course of dealing between any Parties shall operate as a waiver of any such right or remedy, except as provided herein. No single or partial exercise of any default, right or remedy by a Party under this Agreement shall preclude any other or further exercise of such default, right or remedy, except as provided herein. The rights and remedies available to a Party are cumulative and not exclusive of any other rights and remedies provided by law or equity.

14.9 Right to Rely Upon Authority of Person Signing Agreement . When a Member is a company, limited liability company, corporation or any entity other than a natural person, the Company shall (i) not be required to determine the authority of the Person signing this Agreement or any amendment to make any commitment or undertaking on behalf of such entity, nor to determine any fact or circumstance bearing upon the existence of his or her authority, (ii) be entitled to rely upon the authority of the Person signing this Agreement or any amendment with respect to voting of the interest of such entity and with respect to the giving of consent on behalf of such entity or any other Person in connection with any matter for which consent is permissible or required under this Agreement, and (iii) be entitled to rely upon the authority of any administrator or officer of any such entity as though such person were the person originally executing this Agreement or any amendment on behalf of such entity. This provision shall not apply where a Administrator appointed from the OSPE List is executing or amending a contract or granting consent as required under a contract (all as contemplated in this Section), on behalf of the Company, with OSPE or one of its Affiliates.

14.10 Governing Law . The laws of the Commonwealth of Virginia shall govern the validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the Members, without regard to the conflict of law provisions thereof.

14.11 Company Property . All legal title to Company property shall be held in the name of the Company.

14.12 Counterparts . This Agreement may be executed in any number of counterparts and each shall be considered an original and together they shall constitute one and the same Agreement. Facsimiles of signatures may be accepted in lieu of original signatures and shall have the force and effect of such original signatures.

14.13 Entire Agreement . All exhibits attached to this Agreement are incorporated herein by reference. This Agreement constitutes the entire agreement of the Members with respect to the Company. This Agreement supersedes all prior agreements and oral understandings among the Members with respect to such matters.

14.14 Force Majeure . Each party shall have no liability to the other for any failure to perform its obligations hereunder, to the extent such failure is due to severe unusual

weather, an act of God, fire, lockout, strike (or other labor dispute), riot, act of terrorism, government action or inaction, failure of performance by a common carrier, failure of performance by a public utility, vandalism, or failure of performance by an entity providing prerequisite services related to the provision of Services to the Development.

14.15 Notice. Any notice, request, demand, report, consent or other document or instrument which may be required or permitted to be furnished to or served upon a Party shall be in writing which shall be personally delivered or sent by facsimile (with a duplicate copy sent by any other permitted method), or deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid, addressed to the Party entitled to receive the same at its address set forth below (or such other address as such Party shall designate by notice to the other Party given in the manner set forth herein):

To BAC:

Broadlands Communications, L.L.C.
42935 Waxpool Road
Ashburn, Virginia 20148
Facsimile: (703) 858-7380
Attn: President

With a copy to:

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Sixth Floor
Washington, D.C. 20036
Facsimile: (202) 745-0916
Attn: Lawrence R. Freedman

And

Terrabrook
3030 LBJ Freeway, Suite 1500
Dallas, Texas 75234
Facsimile: (972) 443-6190
Attention: Cynthia Stephens

And

Van Metre
5252 Lyngate Court
Burke, Virginia 22015
Facsimile: (703) 239-0395
Attn: Laurence Bensignor

To OSPE:

3725 Concorde Parkway, Suite 100
P.O. Box 220870
Chantilly, Virginia 20151
Facsimile: (703) 502-7996
Attn: William Dean

With a copy to:

Shaw Pittman
2300 N. Street, N.W.
Washington, DC 20037-1128
Facsimile: (202) 663-8007
Attn: Tina Reynolds

Such notice shall be effective, (i) if sent by facsimile transmission, when confirmation of effective delivery is received (or upon date of refusal or acceptance of delivery of the confirmation hard copy, whichever shall occur first), or (ii) if mailed or sent by courier, upon the date of delivery or refusal as shown by the return receipt therefor. Notice to the Company shall

not be valid unless sent to both Members. Any time either Party or its Affiliate(s) receives correspondence regarding or relating to an Exclusivity Challenge, such Party shall endeavor in good faith to provide or shall cause its Affiliate(s) to endeavor in good faith to provide a copy of such correspondence to the other Party.

14.16 Headings. All of the headings contained herein are for convenience only and shall have no legal meaning.

14.17 Third Party Beneficiaries. The Developer is an express third party beneficiary of all of the obligations of OSPE. OBM, OBV and M.C. Dean, Inc. are express third party beneficiaries of all the obligations of BAC. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person or entity other than the Parties, Developer, OBM, OBV and M.C. Dean, Inc. and their respective successors or permitted assigns, any rights or remedies under or by reason of this Agreement. Notwithstanding anything contained herein, Developer, OBM, OBV and M.C. Dean, Inc. shall have no independent right to assert a breach that results in Termination.

14.18 Recovery of Costs. The prevailing party in any litigation, proceeding or action commenced in connection with enforcing any of the provisions of this Agreement shall recover any and all legal expenses incurred in pursuing such litigation, proceeding or action from the non-prevailing party. This Section 14.18 does not apply to costs associated with Section 14.2.

14.19 Interest. In connection with all payments to be made in accordance with this Agreement, a Party shall be required to pay interest on any payments past due more than thirty (30) days equal to the prime rate interest (as stated in the Wall Street Journal measured on the circulation day preceding the date that such payment became past due) plus five percent (5%), from the date due until the date paid (subject to the next sentence, the "Default Rate"). If at the time of payment of any interest pursuant to this Agreement is due, such payment exceeds the limit currently prescribed by any applicable law, with regard to payments of like character and amount, then such payment shall be reduced to the limit permitted, so that in no event shall any payment due in accordance with this Agreement, exceed the current limit permitted, but such payment shall be fulfilled to the limit permitted.

14.20 Recitals. Each of the introductory clauses and recitals contained in this Agreement are hereby incorporated by this reference and made a part of this Agreement.

14.21 Day References. References to "business" days within this Agreement shall mean any day between and including Monday through Friday, but is not meant to include United States government federal holidays. Additionally, if the date of any notice required to be given or action to be taken falls on a weekend or federal holiday, such notice or action may be delivered or taken on the next business day. Unless specifically stated otherwise, any reference to "days" means calendar days.

14.22 Confidentiality. All documents and information exchanged between the Parties under this Agreement shall be held in confidence and solely for the purposes of implementing and enforcing this Agreement.

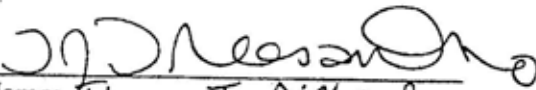
IN WITNESS WHEREOF, this Agreement has been executed as of the date written above.

BROADLANDS COMMUNICATIONS, L.L.C.

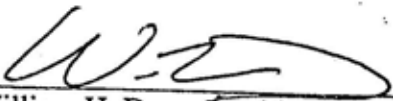
By: Westerra Broadlands, L.L.C., its member

By: Westerra Management, L.L.C., its authorized representative

By:

Name: Thomas J. D'AlessandroTitle: Vice President**OPENBAND SPE II, LLC**

By:



William H. Dean, President

